

FILED  
IN SUPREME COURT  
OF TEXAS

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**NO. 08-0172**

BLAKE HAWTHORNE, Clerk

BY \_\_\_\_\_ Deputy

IN THE SUPREME COURT OF TEXAS

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**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS,**

**Petitioner,**

**v.**

**ATTORNEY GENERAL OF TEXAS**

**and**

**THE DALLAS MORNING NEWS, L.P.,**

**Respondents.**

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On Petition for Review from the  
Third Court of Appeals at Austin, Texas

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**THE DALLAS MORNING NEWS, L.P.'S RESPONSE TO COMPTROLLER'S  
BRIEF ON THE MERITS AND BRIEF ON THE MERITS**

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## STATEMENT OF THE CASE

*Nature of the case:* Declaratory judgment action arising from a request by The Dallas Morning News, L.P. (“*The News*”) pursuant to the Texas Public Information Act, Texas Government Code section 552.001 *et seq.* (“TPIA” or the “Act”), to the Texas Comptroller of Public Accounts (“Comptroller” or “CPA”). CR 5.

In response to a request for a letter ruling by the Comptroller, the Attorney General concluded that state employees’ date-of-birth information is public information and, therefore, subject to disclosure under the TPIA. CR 14, 23. The Comptroller filed suit against the Attorney General seeking a declaration that date-of-birth information is not public. *The News* intervened as a matter of statutory right, seeking a declaratory judgment that the information was public and the recovery of statutory attorneys’ fees.

*Trial court orders signed by:*

Judge Lora Livingston, 261st District Court, Travis County  
Judge Stephen Yelenosky, 345th District Court, Travis County

*Trial court’s disposition:*

Judge Livingston granted partial summary judgment for *The News* on September 6, 2006, concluding that state employees’ date-of-birth information is public information and, therefore, subject to disclosure under the TPIA. CR 169.

Judge Yelenosky denied summary judgment for *The News* on January 26, 2007 on the issue of attorneys’ fees, concluding that *The News* was not entitled to attorneys’ fees under section 552.323(b) of the Texas Government Code or Chapter 37 of the Texas Civil Practice and Remedies Code. CR 183-84, 186.

*Parties in court of appeals:*

Appellant / Cross-Appellee: Comptroller  
Appellee: Attorney General of Texas  
Appellee/Cross-Appellant: *The News*

*Appellate district:*

Third, sitting in Austin, Texas

*Panel:* Chief Justice Kenneth Law and Justices Diane Henson (author)  
and Alan Waldrop

*Citation:* 244 S.W.3d 629 (Tex. App.–Austin 2008, pet. pending)

*Court of appeals’  
disposition:* Affirmed

## **STATEMENT OF JURISDICTION**

This Court has jurisdiction of this case under section 22.001(a)(6) of the Texas Government Code and over *The News*' conditional Cross-Petition for Review under Rule 53.7(c) of the Texas Rules of Appellate Procedure.

**THE NEWS' REPLY TO ISSUES PRESENTED BY  
COMPTROLLER'S PETITION FOR REVIEW**

1. The birth date of a public employee contained in the state payroll database maintained by the Comptroller is public information under the Texas Public Information Act ("TPIA" or the "Act"). Such information is not excepted from disclosure by the Act under the common-law right to privacy. The Court should not judicially amend the TPIA to change the result below.
2. *The News* is entitled to its attorneys' fees under either the TPIA or Chapter 37 of the Texas Civil Practice and Remedies Code in light of the trial court's declaratory judgment in favor of *The News* on the merits. In the event that the Court resolves to grant the Comptroller's petition for review, the Court should grant *The News*' conditional cross-petition to reverse the court of appeals' judgment on the issue of attorneys' fees.

**ISSUES PRESENTED BY THE NEWS**

1. Did the court of appeals err when it determined that the Comptroller had not waived her argument that a public employee's birth date is not excepted from disclosure by the TPIA under the common-law right to privacy?
2. Was *The News* entitled to summary judgment on the issue of attorneys' fees under section 552.323(b) of the Texas Government Code or Chapter 37 of the Texas Civil Practice and Remedies Code after it had substantially prevailed on the merits of its TPIA and Declaratory Judgment Act claims?

TO THE HONORABLE SUPREME COURT OF TEXAS:

Respondent/Cross-Petitioner, The Dallas Morning News, L.P. (“*The News*”) submits this combined Response Brief on the Merits and Brief on the Merits in opposition to the Texas Comptroller of Public Accounts’ (“Comptroller” or “CPA”) Petition for Review. In an unanimous opinion, the Third Court of Appeals, like the Attorney General and the trial court before it, correctly concluded that a state employee’s date of birth is public information not exempted from disclosure under the Texas Public Information Act (“TPIA” or the “Act”). Accordingly, the Court should decline to exercise its discretionary jurisdiction to review the issue and effectively rewrite the TPIA.

Alternatively, if the Court resolves to grant the Comptroller’s Petition for Review, the Court should then grant *The News*’ conditional cross-petition to reverse the court of appeals’ judgment on the issue of attorneys’ fees. *The News* is entitled to its attorneys’ fees in this action under either the TPIA or Chapter 37 of the Texas Civil Practice and Remedies Code in light of the trial court’s declaratory judgment in favor of *The News* on the merits.

### **STATEMENT OF FACTS**

The court of appeals correctly stated the nature of the case. *The News*, however, submits the following additional facts not included in the court of appeals’ opinion:

*The News* maintains a number of public information databases that are used for news gathering and reporting. 1<sup>st</sup> Supp. CR 49. In 2005, *The News* requested information from the Comptroller state employee payroll database, including date-of-

birth information of state employees. CR 10; 1<sup>st</sup> Supp. CR 48-50. The request was made for routine purposes in order to obtain the most current version of the database available. 1<sup>st</sup> Supp. CR 49. *The News* had previously requested, and received, the state employee payroll database, including date-of-birth information, from the Comptroller. *Id.*

As part of its undisputed summary judgment evidence, *The News* presented the affidavit of Pam Maples, the assistant managing editor/projects-and-investigations for *The News*. 1<sup>st</sup> Supp. CR 53. Ms. Maples testified that reporting by *The News* often focuses on the job performance of public employees and officials. *Id.* In order to evaluate those individuals' fitness and qualifications for public office or employment and their job performance, date-of-birth information is frequently used by *The News*. 1<sup>st</sup> Supp. CR 53-54. Ms. Maples further testified that *The News* does not intend to publish the public employee database wholesale in its newspaper or on its website or to sell or make the information available to third parties, that *The News* would only publish a birth date when it had particular relevance to a news story of public interest or concern, that *The News* takes steps against the unauthorized acquisition or disclosure of the information held in its newsroom databases, and that she has no knowledge of any person who has ever used a birth date obtained from *The News*' databases to commit identity theft. 1<sup>st</sup> Supp. CR 54-55.

### **SUMMARY OF THE ARGUMENT**

As a threshold matter, the Comptroller is without a single privacy theory to support her argument. As recently as her Petition for Review, the Comptroller has

variously asserted all three distinct privacy torts recognized by Texas law. That is no longer the case, however. In her Brief on the Merits, the Comptroller has, once again, abandoned all but one privacy theory—intrusion upon seclusion. In the court of appeals, the Comptroller waived her reliance upon the theory of public disclosure of embarrassing private facts and the theory of unlawful appropriation. She has now done so in this Court too. The Comptroller, moreover, never presented the theory of intrusion upon seclusion to the trial court. In light of the fact that the Comptroller has waived her reliance on two theories and asserted her sole remaining theory for the first time on appeal, the Court should go no further to determine that the Comptroller’s Petition for Review should be denied.

As to the merits, the Court should flatly reject the Comptroller’s tacit suggestion that it judicially amend the TPIA. In Texas, the Legislature has already carefully considered the policy argument advanced by the Comptroller and, to date, has chosen not to extend privacy protection to public employee birth dates under the TPIA. Although several other states have decided to extend privacy protection to public employee dates of birth, they have done so by legislative enactment, not by judicial decision. Regardless, the Comptroller argues that the Court should extend the common law tort of intrusion upon seclusion to make private the dates of birth of public employees. The Comptroller, however, offers no reason why the public information issue presented here should be resolved by the Court instead of by legislative enactment. In that regard, the Comptroller



has not cited the Court to a single case where another court has extended the common law tort of intrusion upon seclusion to protect public employees' dates of birth.

In any event, the release of a public employee's birth date, in conjunction with the employee's name, does not violate the common-law right to privacy, as the court of appeals, the Attorney General, and the trial court all correctly concluded. Not one of the three common-law privacy theories variously asserted by the Comptroller from the trial court to this Court excepts a public employee's birth date from disclosure under the TPIA.

Further, the Comptroller's unproven assertion that the release of a public employee's birth date creates a risk of identity theft does not exempt birth dates from disclosure under the TPIA. This Court has already expressly rejected an identically structured argument by the Comptroller in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). It should likewise do so here.

Finally, if the Court grants the Comptroller's Petition for Review, the court of appeals should be reversed for affirming the trial court's failure to award *The News* its attorneys' fees under the TPIA or Chapter 37 of the Texas Civil Practice and Remedies Code in light of its declaratory judgment in favor of *The News* on the merits. *The News* is entitled to its attorneys' fees under either statute.

## ARGUMENT

**I. The Court should decline to review this case because the Comptroller waived her argument that a public employee's birth date is not excepted from disclosure by the TPIA under the common-law right to privacy.**

The court of appeals erred when it determined that the Comptroller had not waived her argument that a public employee's birth date is not excepted from disclosure by the TPIA under the common-law right to privacy.<sup>1</sup> *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 244 S.W.3d 629, 635-36 (Tex. App.–Austin 2008, pet. filed) (“Comptroller”).

Texas law recognizes three distinct privacy torts. First, it recognizes the right to be free from the public disclosure of embarrassing private facts, which is the only privacy interest that applies in TPIA cases. *See Indus. Foundation of the South v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Second, it recognizes the tort of intrusion upon seclusion. *See Billings v. Atkinson*, 489 S.W.2d 858, 859-60 (Tex. 1973). Third, it recognizes the tort of unlawful appropriation of a person's name or likeness for commercial use. *See Express One Int'l v. Steinbeck*, 53 S.W.3d 895, 900 (Tex. App.–Dallas 2001, no pet.).

The Comptroller asserted all three judicially recognized privacy theories in her Petition for Review. (CPA Pet. at 8). That is no longer the case, however. The Comptroller's Brief on the Merits reveals that the Comptroller has now, once again,

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<sup>1</sup> *The News* presented its waiver argument as an independent ground for affirmance in the form on an unbriefed issue in its Response to the Comptroller's Petition for Review in accordance with Texas Rule of Appellate Procedure 53.2(i).

abandoned all but one privacy theory—intrusion upon seclusion. There is no argument in the Comptroller’s Brief on the Merits based on the two other theories. As a consequence, assuming solely for the sake of argument that public revelation of private facts and unlawful appropriation were ever properly before this Court, and we emphasize they were not, those theories are no longer before the Court now. The glaring problem with the Comptroller’s exclusive reliance on intrusion upon seclusion, moreover, is that the Comptroller never presented that theory to the trial court. Intrusion upon seclusion was only raised for the first time in the court of appeals. Accordingly, that theory too is not before the Court. In light of the fact that the Comptroller has waived her reliance on two theories and asserted her sole remaining theory for the first time on appeal, the Court should go no further to determine that the Comptroller’s Petition for Review should be denied.

In the trial court, the Comptroller, quoting *Industrial Foundation*, argued that date-of-birth information was excepted from disclosure because “(1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person; and (2) the information is not of legitimate public concern.” CR 88. The Comptroller also cited *Industrial Foundation* for the proposition that invasion of privacy can be based on the misappropriation of one’s identity. CR 89.

Then, for the first time on appeal, the Comptroller, citing *Billings*, argued that *The News*’ request violates “the right to freedom from intrusion upon a person’s seclusion or solitude, or into his private affairs.” CPA COA Brief at 5. The Comptroller also

asserted, citing *Billings*, that *The News*' request violates "the right to be free from the unwarranted appropriation or exploitation of one's personality, including the publicizing of private affairs for which the public has no legitimate concern." CPA COA Brief at 7.

The significance of the Comptroller's shift in privacy theories on appeal was twofold. First, the Comptroller abandoned her privacy theory based upon the public revelation of highly intimate and embarrassing private facts under *Industrial Foundation*, which is the only privacy theory that applies in TPIA cases and the only theory it advanced in the trial court. To quote: "[I]t is the *Billings*' [sic] analysis which should be applied here and not the *Industrial Foundation's* [sic] analysis." CPA COA Brief at 7. As a consequence of the Comptroller's explicit abandonment of her public revelation of private facts theory in the court of appeals, that theory is not properly before the Court. Beyond that, there is no mention of that theory, let alone argument based upon it, in the Comptroller's Brief on the Merits. In short, because the Comptroller waived her public revelation of private facts theory in the court of appeals, and because the Comptroller has not asserted that theory in her Brief on the Merits, the Court need not reach that issue here.

Second, and more importantly, the Comptroller asserted a new privacy theory— intrusion upon seclusion—for the first time in the court of appeals. It is well established that a party may not rely upon a new legal theory for the first time on appeal, which is precisely what the Comptroller has done here. *See Adams v. First Nat'l Bank*, 154 S.W.3d 859, 871 (Tex. App.–Dallas 2005, no pet.) (an issue may not be raised for the

first time on appeal); *E.F. Hutton & Co., Inc. v. Youngblood*, 741 S.W.2d 363, 364 (Tex. 1987) (argument that the DTPA is inapplicable to securities transactions was never presented to the trial court and therefore waived). Because the Comptroller failed to present the theory of intrusion upon seclusion to the trial court, the court of appeals erred in reaching it.

Notably, although it ultimately chose to reach both the theories of intrusion upon seclusion and public revelation of private facts, the court of appeals felt compelled to acknowledge that “it [was] not entirely clear which judicially recognized privacy interest the Comptroller [was] relying upon in order to establish that date of birth information is considered to be confidential by judicial decision.” *Comptroller*, 244 S.W.3d at 635. Similarly, the court of appeals also declared that “the Comptroller’s arguments [were] somewhat difficult to discern.” *Id.* at 636.

Notwithstanding its own difficulty in discerning the Comptroller’s argument, the court of appeals concluded that the Comptroller’s reliance on section 552.101 of the TPIA in the trial court was, in itself, sufficient to allow the Comptroller to argue intrusion upon seclusion for the first time on appeal. We disagree. The problem with the court of appeals’ reasoning arises from the language of section 552.101 itself, which provides that information is excepted from disclosure under the TPIA “if it is information considered to be confidential by law, either constitutional, statutory, or *by judicial decision.*” *See id.* 552.101 (emphasis added). Fatally, the Comptroller failed to cite *Billings*, the linchpin of her current analysis, or any other judicial decision for the proposition that public

employees' dates of birth are, or should be, confidential based on the theory of intrusion upon seclusion in the trial court. Hence, the court of appeals erred in concluding that intrusion upon seclusion had not been raised for the first time on appeal.

Finally, the court of appeals correctly concluded that the theory of wrongful appropriation of one's identity was not before it. To that end, the court of appeals remarked: "The Comptroller apparently concedes that wrongful appropriation is not at issue in this case, having cited to no authorities or anything in the record indicating that this theory provides a basis for finding that employees' birth dates are confidential." *Comptroller*, 244 S.W.3d at 635 n. 4. Regardless, the Comptroller still asserted in her Petition for Review, again without citation to a single Texas case, that wrongful appropriation is the "most compelling" privacy interest at issue "for it is this privacy interest that cuts to the heart of identity theft." (CPA Pet. at 13). Now, however, there is no mention of that theory, let alone argument based upon it, in the Comptroller's Brief on the Merits. In short, because the Comptroller waived her wrongful appropriation argument in the court of appeals, and because the Comptroller has not asserted that theory in her Brief on the Merits, the Court and need not reach that issue here.

In sum, the Comptroller has left itself without a single privacy theory through waiver or by having raised her sole remaining theory for the first time on appeal. Accordingly, the Comptroller's Petition for Review should be denied.

**II. The Court should reject the Comptroller's tacit invitation to do the work of the Legislature.**

**A. The Legislature determines Texas' public information policy.**

The Comptroller frankly stakes her case on policy rather than law. Yet, it is the exclusive province of the Legislature, not this Court, to weigh and resolve competing policy considerations. Once the Legislature has adopted a policy, as it has in the TPIA, it is for the courts to enforce, strictly adhering to the relevant statutory scheme. As this Court has stated, "The wisdom or expediency of the law is the Legislature's prerogative, not ours." *Smith v. Davis*, 426 S.W.2d 827, 831 (Tex. 1968). "Courts must take statutes as they find them. More than that, they should be willing to take statutes as they find them." *Rudman v. Railroad Commission of Texas*, 349 S.W.2d 717, 721 (Tex. 1961) (quoting *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920)). As the Court has acknowledged, the Legislature is best positioned to consider and resolve competing public policy concerns. *Lawrence v. CDB Services, Inc.*, 44 S.W.3d 544, 553 (Tex. 2001).

Since the inception of the Texas Open Records Act, moreover, this Court has deferred to the Legislature to decide Texas' policy on public information:

The public's right to be informed about the affairs of government may thus conflict with the right of the individual to control access to information concerning his own affairs. The balance between these two competing interests has not yet been struck with clarity, and the nature and extent of each interest is yet to be satisfactorily determined. We believe, however, that, except in unusual circumstances, the task of balancing these interests must be left to the Legislature. In the Open Records Act the Legislature has addressed the

problem of access to government records. Although some provision has been made for safeguarding the privacy of the individual . . . , the Act makes clear that it must ‘be liberally construed in favor of the granting of any request for information.’

*Indus. Found.*, 540 S.W.2d at 676 (internal citations omitted); *see also A & T Consultants*, 904 S.W.2d at 674-75.

During the last regular Texas legislative session, bills were introduced in both the House and the Senate that would have obviated the public information issue at hand. *See* Tex. S.B. 1848, 80th Leg., R.S. (2007) (Appendix, Tab 1); Tex. HB 3767, 80th Leg., R.S. (2007) (Appendix, Tab 2). Both versions of the bill sought to amend several sections of the TPIA to preclude the disclosure of public employee date-of-birth information absent the employee’s election to allow public access to that information. The bills, however, died in committee.

If the Comptroller wishes to renew the debate on whether it is sound public policy to except public employee birth dates from disclosure, the Legislature will be in session soon enough. “If the statutory rule . . . is unwise, unworkable or impractical, the solution is legislative change. . . . [T]he legislature meets within a few months and it is empowered to grant such relief.” *Enter. Co. v. City of Beaumont*, 574 S.W.2d 786, 791 (Tex. Civ. App.—Beaumont 1978, no writ). The court of appeals, moreover, endorsed this approach to resolve the issue presented, noting that “the Texas Legislature has not yet chosen to create an exception for date-of-birth information.” *See Comptroller*, 244 S.W.3d at 641 n. 9.



In sum, in view of the deference that the Court gives to the Legislature in determining Texas' public information policy, the Court should reject the Comptroller's tacit invitation to create a new exception to the TPIA by extending the well-established boundaries of the common law tort of intrusion upon seclusion.

**B. Legislation in Texas and other states supports *The News'* position.**

The Comptroller cites several statutes from foreign jurisdictions as well as section 35.48 of the Texas Business and Commerce Code in support of her argument that the Court should extend the boundaries of the tort of intrusion upon seclusion to cover the birth dates of public employees. (CPA Brief on the Merits at 7-8). The Comptroller's reliance on these statutes is entirely misplaced. The statutes actually support *The News'* argument that the Texas Legislature is the proper forum to deal with privacy issues relating to the birth dates of public employees. The few states that protect public employee date-of-birth information have done so by legislation, not judicial activism. The Comptroller offers no reason why the Court should resolve the issue presented here instead of the Legislature.

The Comptroller's reliance on section 35.48 of the Texas Business and Commerce Code is equally misplaced. First of all, that statute deals with the retention and disposal of records containing "personal identifying information," including an individual's date of birth, that are maintained by private businesses, not the state. TEX. BUS. & COM. CODE § 35.48(a) (Vernon Supp. 2008). Further, section 35.48, like the statutes the Comptroller cites from other jurisdictions, supports *The News'* argument that the Texas Legislature is

the proper forum to create an exception to the TPIA. The Legislature has already determined that identity theft is a problem and that birth dates are used in committing identity theft. Consequently, the Court should leave it to the Legislature to provide the remedy for the problem.

**III. The Court should decline to review this case because the court of appeals correctly concluded that the release of a public employee's birth date, in conjunction with the employee's name, does not violate any common-law right to privacy, thereby entitling that information to be withheld under the confidential-information exception of the TPIA.**

Initially, as the court of appeals correctly observed, it is undisputed that public employees' dates of birth are public information under the TPIA because they are collected and maintained by the Comptroller's office in connection with its official business. *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 244 S.W.3d 629, 635 (Tex. App.—Austin 2008, pet. filed) (“*Comptroller*”). The issue presented for review, therefore, is whether a public employee's birth date falls within an explicit statutory exception to disclosure under the TPIA. The Comptroller asserts that the disclosure of a public employee's date of birth, in conjunction with that employee's name, violates the employee's common-law right to privacy, thus prohibiting disclosure under section 552.101 of the TPIA because the information is “confidential . . . by judicial decision.” (CPA Brief on Merits at 3 n. 1). For the reasons that follow, the Comptroller's argument widely misses the mark.

**A. The release of a public employee's birth date, in conjunction with the employee's name, is not an intrusion upon seclusion entitling a birth date to be withheld under the confidential-information exception of the TPIA.**

Although the court of appeals erred when it determined that intrusion upon seclusion had not been raised for the first time on appeal, it correctly concluded that the release of state employees' date-of-birth information is not an intrusion upon seclusion entitling that information to be withheld under the confidential-information exception of the TPIA. *Comptroller*, 244 S.W.3d at 637-38.

The tort of intrusion upon seclusion was first recognized by this Court in *Billings v. Atkinson*, 489 S.W.2d 858, 859 (Tex. 1973), the case that now underlies the Comptroller's single privacy theory in her Brief on the Merits. This Court later explained that intrusion upon seclusion is established by showing (1) an intentional intrusion, physical or otherwise, upon another's solitude, seclusion, or private affairs or concerns, (2) that the intrusion would be highly offensive to a reasonable person, and (3) that the person suffered an injury as a result of the intrusion. *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993). Importantly, the theory is "typically associated with either a physical invasion of a person's property or eavesdropping on another's conversation with the aid of wiretaps, microphones, or spying." *Clayton v. Wisener*, 190 S.W.3d 685, 696 (Tex. App.—Tyler 2005, no pet.); *GTE Mobilnet of S. Tex. Ltd. P'ship v. Pascouet*, 61 S.W.3d 599, 618 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

The Comptroller cites no authority, and neither we nor the court of appeals have found any, where a Texas court determined that a party suffered an intrusion upon his

seclusion absent evidence of a physical invasion or eavesdropping. *Comptroller*, 244 S.W.3d at 636. On the contrary, moreover, several courts have held that a party could not recover under this theory because there was no allegation that a physical invasion or eavesdropping had taken place. *See, e.g., Clayton*, 190 S.W.3d at 697; *Wilhite v. H.E. Butt Co.*, 812 S.W.2d 1, 6 (Tex. App.–Corpus Christi 1991, no writ), *overruled on other grounds, Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994).

*The News'* TPIA request for public employees' date-of-birth information is the antithesis of an intentional physical trespass or eavesdropping. A request pursuant to the TPIA cannot amount to an intentional trespass. This conclusion logically, and necessarily, follows from the premise that *The News* is simply exercising a legal right under procedures established by the Legislature. A TPIA request fundamentally differs from a wiretap, computer hacking, mail intercepts, or the like.

As an independent ground for its holding, the court of appeals correctly concluded, even assuming for the sake of argument that this privacy interest can be violated without a physical invasion or eavesdropping, that the Comptroller failed to show that releasing date-of-birth information constitutes an intentional intrusion upon state employees' seclusion or private affairs that would be highly offensive to a reasonable person. *Comptroller*, 244 S.W.3d at 636.

Admitting that she has no authority for her position, the Comptroller seeks that the Court change well settled Texas law. More exactly, the Comptroller seeks that the Court expand the scope of the tort of intrusion upon seclusion beyond physical trespass and

eavesdropping to the access and release of information on a state database. (CPA Brief on the Merits at 9-12). The Comptroller offers no authority to support her request for the Court to take such an enormous jurisprudential leap. Accordingly, the Court should reject the Comptroller's invitation to expand the scope of this tort beyond its established boundaries.

**B. The release of a public employee's birth date, in conjunction with the employee's name, does not constitute a public disclosure of embarrassing private facts entitling that information to be withheld under the confidential-information exception of the TPIA.**

Although the Comptroller has not has asserted this theory in her Brief on the Merits and abandoned it in the court of appeals, it will nevertheless be addressed for the sake of completeness. The Comptroller has asserted that public employees' date-of-birth information is confidential because its release would constitute the public disclosure of embarrassing private facts under *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). (CPA Pet. at 12). That assertion is meritless, as the court of appeals correctly concluded. *Comptroller*, 244 S.W.3d at 638-39.

Under this privacy theory, this Court has explained that the injured party "must show (1) that publicity was given to matters concerning his private life, (2) the publication of which would be highly offensive to a reasonable person of ordinary sensibilities, and (3) that the matter publicized is not of legitimate public concern." *Indus. Found.*, 540 S.W.2d at 682. The Court has interpreted these requirements to mean that the information must contain "highly intimate or embarrassing facts about a person's

private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities.” *Id.* at 683.

We stress that the Comptroller has *not* argued that a state employee’s birth date is a highly intimate or embarrassing fact. Rather, the Comptroller has argued that the *use* to which someone might put that information by committing identity theft would be highly objectionable. (CPA Pet. at 12). As established below under section III.D., however, the purported *use* of the information and the purpose of the requestor cannot be considered when determining whether public information is subject to an exception from disclosure under the TPIA. For these reasons, the Court need inquire no further to resolve this privacy theory against the Comptroller.

In any event, as the court of appeals correctly concluded, a state employee’s birth date, if known to the general public, is neither highly intimate nor embarrassing. *Comptroller*, 244 S.W.3d at 636. No Texas court has ever found to the contrary. This Court’s opinion in *Industrial Foundation* has long illustrated the sort of information that Texas law considers to be highly intimate or embarrassing. In that case, the Texas Industrial Accident Board claimed that certain of its workman’s compensation claim files were confidential because the files contained matters of “extreme privacy which, if released, would cause extreme embarrassment to the claimant.” *Indus. Found.*, 540 S.W.2d at 683. Examples cited by the Board included a claim for injuries arising from sexual assault, death benefit claims on behalf of illegitimate children, claims for psychiatric treatment of mental disorders, claims for injuries to sexual organs, and a

claim for injuries stemming from an attempted suicide. *Id.* This Court agreed with the Board that at least some of these claims were “of such a nature that their publication would be highly offensive to a reasonable person.” *Id.* We submit that such examples are a far cry from one’s date of birth. As support, we observe that not even an employee’s salary information is highly embarrassing or of such an intimate nature that, if publicized, would be highly objectionable to a reasonable person. *The Baytown Sun v. City of Mont Belvieu*, 145 S.W.3d 268, 271 n. 6 (Tex. App.–Houston [14<sup>th</sup> Dist.] 2004, no pet.).

The Attorney General, moreover, has consistently rejected the Comptroller’s argument that date-of-birth information is protected by the common-law right to privacy. *See* Tex. Att’y Gen. Op. MW-283 (1980); Tex. Att’y Gen. OR2003-5954 (2003); Tex. Att’y Gen. OR2005-08056 (2005). For instance, OR2003-5954 clearly states: “[W]e particularly note, however, that information revealing a public employee’s date of birth is not protected by common-law privacy.” Tex. Att’y Gen. OR2003-5954, at 6 (citing Tex. Att’y Gen. Op. MW-283 (1980)). Indeed, as recently as September 1, 2005, the Comptroller asked the Attorney General to determine if date-of-birth information could be withheld. Consistent with its prior rulings, the Attorney General held that “common

law privacy does not protect dates of birth.”<sup>2</sup> Tex. Att’y Gen. OR2005-08056 (2005).

These Attorney General opinions are entitled to great weight. *Heard v. Houston Post Company*, 684 S.W.2d 210, 212 (Tex. App.–Houston [1<sup>st</sup> Dist.] 1984, writ ref’d n.r.e.).

Further, even assuming for the sake of argument that a public employee’s birth date could somehow be a highly intimate and embarrassing fact, the Comptroller’s argument still fails. As in the court of appeals, Comptroller has made no attempt in this Court to show that the information sought is not of legitimate public concern. Under *Industrial Foundation*, even if a birth date was considered to be a highly intimate or embarrassing fact, the TPIA still requires disclosure of the information if it is of legitimate interest to the public. *Indus. Found.*, 540 S.W.2d at 682. In this case, although the Comptroller bore the burden of proving that public employees’ dates of birth are not of legitimate public interest, Comptroller offered no such proof. *See Thomas v. Cornyn*, 71 S.W.3d 473, 480-81 (Tex. App.–Austin 2002, no pet.).

In sum, even assuming for the sake of argument that this theory was before the Court, the release of a public employee’s date of birth is not a disclosure of embarrassing private facts entitling that information to be withheld under the TPIA.

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<sup>2</sup> The Attorney General has found only the following types of information protected: medical information or information indicating disabilities or specific illnesses, personal financial information not relating to a financial transaction between the individual and a governmental body, information concerning the intimate relations between individuals and their family members, and the identities of the victims of sexual abuse. Tex. Att’y Gen. ORD-659, at 3 (1999) (summarizing opinions).



**C. The release of a public employee’s birth date, in conjunction with the employee’s name, does not constitute a violation of the tort of wrongful appropriation of one’s name or likeness entitling that information to be withheld under the confidential-information exception of the TPIA.**

Although the Comptroller has not asserted this theory in her Brief on the Merits and abandoned it in the court of appeals, it will nevertheless be addressed here for the sake of completeness. As its elements demonstrate, the tort of unlawful appropriation plainly does not apply to facts before the Court. The three elements of the invasion of privacy by misappropriation are: “(1) the defendant appropriated the plaintiff’s name or likeness for the value associated with it; (2) the plaintiff can be identified from the publication; and (3) there was some advantage or benefit to the defendant.” *Express One Int’l v. Steinbeck*, 53 S.W.3d 895, 900 (Tex. App.–Dallas 2001, no pet.).

As the Fifth Court of Appeals has put it, “[g]enerally, an appropriation becomes actionable when the name is used ‘to advertise the defendant’s business or product, or for some similar commercial purpose.’” *Id.* (quoting RESTATEMENT (SECOND) TORTS § 652(c), cmt. b (1977)). For example, a former college football star stated a valid claim for invasion of privacy by misappropriation when his picture was used to advertise soft drinks. *See Kimbrough v. Coca-Cola/USA*, 521 S.W.2d 719, 723 (Tex.Civ.App.–Eastland 1975, writ ref’d n.r.e.).

Applying these principles and precedents here, the Court may easily dispose of the Comptroller’s argument that the disclosure of public employees’ date-of-birth information amounts to wrongful appropriation because there is absolutely nothing in the

record concerning the misappropriation of a person's name or likeness for a commercial purpose. In light of that fact, the Comptroller's wrongful appropriate theory is meritless.

As a final but important point, the First Amendment permits the use of a plaintiff's name or likeness in the context of, and reasonably related to, a publication concerning a matter that is newsworthy or of legitimate public concern. *Joe Dickerson & Associates, LLC v. Dittmar*, 34 P.3d 995, 1003 (Colo. 2001) (citing *Lane v. Random House, Inc.*, 985 F. Supp. 141, 146 (D.D.C. 1995)); *see also Matthews v. Wozencraft*, 15 F.3d 432, 439 (5th Cir. 1994) (a name cannot be appropriated by reference to it in connection with the legitimate mention of public activities). This same First Amendment protection undoubtedly bars the claim that the mention of a person's date of birth in connection with a newsworthy event amounts to invasion of privacy by wrongful appropriation.

**D. Texas law precludes consideration of the potential misuse of the information.**

The Comptroller's argument that date-of-birth information disclosed to *The News* or another requestor *might* be used to commit identity theft fails. (CPA Brief on the Merits at 16). As the Court has consistently declared, the TPIA precludes an inquiry by the Court or any government official into the intended use, or potential misuse, of the information requested. *A & T Consultants*, 904 S.W.2d at 676 ("we may *not* consider the requesting party's purpose or *use* for the information") (emphasis added); *Indus. Found.*, 540 S.W.2d at 686 ("the Act prohibits consideration of the motives of the requesting party in determining whether information must be disclosed"); *see also* TEX. GOV'T CODE ANN. § 552.222 (Vernon 2004). Nor does the TPIA permit public information to

be withheld because it might be used in conjunction with other publicly available information, thereby allowing the requestor to deduce confidential information. *See A & T Consultants*, 904 S.W.2d at 676. This principle is true whether *The News* or any other requestor seeks that information. For these reasons, the Comptroller's argument that date-of-birth information should be treated as confidential because it might be *used* to commit identity theft is meritless.

**E. The Comptroller's out-of-state authorities are inapposite here.**

The Comptroller points to cases from other jurisdictions that protect date of birth information under their respective public information acts. Those cases, however, are inapposite here as they relied on exemption 6 of the federal Freedom of Information Act ("FOIA"), which applies a balancing test that is inconsistent with the TPIA. *Compare Indus. Found. of the South v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 681-82 (Tex. 1976) and *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.–Austin 1983, writ ref'd n.r.e.); with *Oliva v. U.S.*, 756 F. Supp. 105, 107 (E.D.N.Y. 1991); *Data Tree, LLC v. Meek*, 109 P.3d 1226 (Kan. 2005); *Scottsdale Unified School Dist. v. KPNX*, 955 P.2d 534 (Ariz. 1998); *Zink v. Commonwealth*, 902 S.W.2d 825 (Ky. Ct. App. 1994).

This Court has recognized that, unlike the FOIA, the TPIA contains a strong statement of public policy favoring access to information and requires courts to accept the Legislature's policy choices, refrain from engaging in a balancing test that allows courts to override those policy choices, and construe the TPIA in favor of granting a

request for information. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Indus. Found.*, 540 S.W.2d at 681-82.

Finally, the Comptroller has not cited the Court to a single case where the another court has chosen to extend the boundaries of the tort of intrusion upon seclusion to protect public employees' dates of birth. In fact, in *Data Tree*, one the Comptroller's own cases, the Kansas Supreme Court expressly declined to apply common law privacy principles because it viewed them as inconsistent with the balancing test it was bound to apply under Kansas' FOIA-like statute. *See Data Tree*, 109 P.3d at 1237.

**IV. The Court must decline to exercise jurisdiction to analyze the attorneys' fees issue presented by the Comptroller because the Comptroller is *not* seeking more favorable relief than she was awarded below.**

As the Court knows, *The News* has filed a conditional cross-petition on the issue of its entitlement to attorneys' fees under either the TPIA or Chapter 37 of the Texas Civil Practice and Remedies Code in light of the trial court's declaratory judgment in favor of *The News* on the merits. Although *The News* is not satisfied with the entire judgment of the court of appeals, *The News* is willing to accept it conditionally and intends to withdraw its cross-petition in the event that the Court declines to grant review of the Comptroller's petition.

We stress that the Court is without jurisdiction to decide the Comptroller's attorneys' fees issue because Comptroller is *not* seeking more favorable relief from this Court than it was awarded by the court of appeals. *See* TEX. R. APP. P. 53.1 ("A party who seeks to alter the court of appeals' judgment must file a petition for review.")

(emphasis added). The Comptroller merely argues that the trial court and court of appeals got to the right result but employed the wrong analysis in getting there. (CPA Brief on the Merits at 17). Presenting such an issue does not confer jurisdiction upon the Court. In short, the Court should reject the Comptroller's attempt to present this non-reviewable issue for its consideration.

The two cases cited by the Comptroller in support of her jurisdictional argument, moreover, are inapposite; both involve scenarios where a party was seeking to alter the court of appeals' judgment. (CPA Brief on the Merits at 23-24). Finally, as a practical matter, granting review of the attorneys' fees issue solely to affirm the judgment of the court of appeals on other grounds would have no bearing on the result below and, consequently, would be an unnecessary drain on the Court's limited time and resources.

**V. The lower courts erred in failing to award *The News* its attorneys' fees.**

As to the merits, the court of appeals erred in failing to reverse the trial court on the issue of attorneys' fees. *The News* was entitled to summary judgment that it recover its attorneys' fees under section 552.323(b) of the TPIA or Chapter 37 of the Texas Civil Practice and Remedies Code.

**A. *The News* is entitled to its attorneys' fees under section 552.323(b) of the TPIA.**

*The News* satisfied all of the elements for recovery of its attorneys' fees under TPIA § 552.323(b). Section 552.323(b) authorizes a court to award costs of litigation and reasonable attorneys' fees to a substantially prevailing party. It provides:

In an action brought under Section 552.353(b)(3), the court

may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion under this subsection, the court shall consider whether the conduct of the officer for public information of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

TEX. GOV'T CODE § 552.323(b).

In other words, to recover attorneys' fees under section 552.323(b), *The News* was required to show (i) that the action was brought under section 552.353(b)(3); (ii) that it, as a defendant, was the party who substantially prevailed; and (iii) the officer for public information of the governmental body did not have a reasonable basis in law to refuse disclosure of the information or the litigation was brought in bad faith. TEX. GOV'T CODE § 552.323(b).

The court of appeals agreed with *The News* on the first element, that the suit was brought under section 552.353(b)(3). *Comptroller*, 244 S.W.3d at 640.<sup>3</sup> The court of appeals also agreed with *The News* on the second element, that *The News* was the prevailing party. *Id.* The court of appeals, however, affirmed the denial of summary judgment to *The News* on the issue of attorneys' fees under the TPIA because it found

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<sup>3</sup> The court of appeals' opinion states as follows: "We agree that suit was brought under section 552.323(b)(3), which permits a governmental body's officer for public information to file a petition for declaratory judgment 'against the attorney general in a Travis County district court. . .'" From the meaning of the pertinent discussion and the text of sections 552.323(b) and 552.353(b)(3) of the TPIA, the court of appeals meant to refer to section 552.353(b)(3). There is no paragraph (3) in subsection 552.323(b), and the subject of subsection 552.323(b) is not the authority to file suit. Section 552.353(b)(3), moreover, does contain the language that the court of appeals quoted.

that the Comptroller had not acted in bad faith and that its suit did not lack a reasonable basis in law. *Id.*

Contrary to the court of appeals' holding, however, its opinion is replete with examples of the lack of a reasonable basis for the suit filed by the Comptroller. For example, the court of appeals found that:

- “it was undisputed that state employees’ dates of birth are public information”;
- the Comptroller cited “no authority” for its privacy intrusion argument;
- the Comptroller made “unsupported assertions”;
- the Comptroller’s identity theft concerns were “speculative and unproven”; and
- no Texas court has ever found date-of-birth information within the zone of constitutional privacy.

*Comptroller*, 244 S.W.3d at 635-640. Simply put, the court of appeals’ failure to advert to such a record constitutes an abuse of discretion.

Notably, the court of appeals’ discussion in the fees portion of the opinion that the Comptroller’s argument was not based on an unreasonable interpretation of the law was relegated to a footnote. *Comptroller*, 244 S.W.3d at 641 n. 9. According to the footnote, the Attorney General acknowledged that some federal courts and courts in other states have recognized privacy protection for date-of-birth information. *Id.* Both the Attorney General and the court of appeals, however, failed to take into consideration that the TPIA materially differs from the FOIA and other state acts. As this Court has stated, “Unlike

the FOIA, our Act contains a strong statement of public policy favoring public access to governmental information and a statutory mandate to construe the Act to implement that policy and to construe it in favor of granting a request for information.” *See City of Garland*, 22 S.W.3d at 364. Accordingly, the mere fact that other public information statutes treat information differently than Texas says nothing about our state law or the Comptroller’s actions under Texas law.

Further, as noted, even the court of appeals recognized that it was up to the Texas Legislature to determine whether to exempt state employees’ dates of birth from public disclosure. *Comptroller*, 244 S.W.3d at 641 n. 9. The fact that the Legislature might one day change Texas law hardly constitutes a reasonable basis for the Comptroller’s suit. In short, under existing Texas law, the only law that matters here, the Comptroller’s actions were arbitrary and lacked a reasonable basis in law.

In sum, as the court of appeals correctly found in the main part of its opinion, the Comptroller’s TPIA argument lacked any semblance of support under Texas law. Regardless, the court of appeals then immediately found that there was no evidence that the Comptroller’s suit lacked a reasonable basis in law. This was a clear abuse of discretion, and the court of appeals reversibly erred by concluding otherwise.

**B. *The News*’ status as an intervenor as a matter of right in no way precludes an award of attorneys’ fees under the TPIA.**

The Comptroller has argued that *The News*, which intervened in this action as a matter of right under section 552.325(a), should not be allowed to recover its attorneys’ fees because the TPIA does not authorize an award of attorneys’ fees to an intervenor.



The court of appeals declined to reach that issue. *Comptroller*, 244 S.W.3d at 640. However, that issue should be resolved in favor of *The News* as section 552.323(b) does not exclude an intervenor from recovering its attorneys' fees.

As a practical matter, moreover, *The News* had to intervene to protect its rights. Section 552.325(c) authorizes the Attorney General to settle with the Comptroller. As a result, there was a possibility that the Attorney General could have agreed with the Comptroller that "all or part of the information that is the subject of this suit should be withheld." TEX. GOV'T CODE § 552.325(c). Hence, because the Attorney General and the Comptroller are both represented by attorneys from the Attorney General's office, *The News* was compelled to protect its rights by hiring independent counsel and intervening in the lawsuit.

**C. *The News* is entitled to its attorneys' fees under the Uniform Declaratory Judgment Act.**

First of all, the Comptroller brought this action pursuant to the Uniform Declaratory Judgment Act ("UDJA"), TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq.* CR 5, 8. Likewise, *The News* first requested declaratory relief in its initial pleading in the trial court. CR 35.

Next, the Comptroller's assertion that the TPIA provides a remedy exclusive of the UDJA has been squarely rejected by the Court. In *City of Garland*, the Court stated that the TPIA and UDJA were *not* mutually exclusive. 22 S.W.3d at 357. In the words of the Court,

The Declaratory Judgments Act gives courts the power to declare rights, status and other legal relations, whether further relief is claimed or could be claimed. *See* TEX. CIV. PRAC. & REM. CODE § 37.003(a). While the Public Information Act does not expressly recognize a governmental body’s right to bring a declaratory judgment action, it does not expressly prohibit a governmental body from bringing a declaratory judgment action. Indeed, both requestors and governmental bodies have brought declaratory judgment actions in open records cases since the Act’s inception.

*Id.* Accordingly, the Court may easily dispose of that argument.

Chapter 37 of the Texas Civil Practice and Remedies Code provides that “[i]n any proceeding under this chapter, the court may award costs and reasonable and necessary attorneys’ fees as are equitable and just.” TEX. CIV. PRAC. & REM. CODE § 37.009 (Vernon 2008). When, as here, the plaintiff has invoked the UDJA, the Court may award attorneys’ fees against the plaintiff in favor of another party. *Save Our Springs Alliance, Inc. v. Lazy Nine Municipal Utility Dist.*, 198 S.W.3d 300, 318 (Tex. App.–Texarkana 2006, pet. denied) (“The rule, that a mirror-image counterclaim for declaratory relief will not support an award of attorney’s fees only applies when a plaintiff does not request declaratory relief.”).

Generally speaking, it is proper to award attorneys’ fees to the prevailing party, such as *The News* here, in a declaratory judgment action. *Spiller v. Spiller*, 901 S.W.2d 553, 560 (Tex. App.–San Antonio 1995, writ denied). As noted, all that UDJA requires is that an award of attorney’s fees be “equitable and just.” TEX. CIV. PRAC. & REM. CODE § 37.009 (Vernon 2008). In this case, is it certainly “equitable and just” to award attorneys’ fees to *The News* because *The News* is the prevailing party and because, as

demonstrated above, the Comptroller has no legal basis to support her position. In short, when, as here, a governmental body unreasonably refuses to turn over information that is clearly intended for public disclosure by statute, it is equitable and just to award attorneys' fees to the requestor. *The News* should not have to bear its own costs for obtaining information that the Comptroller had no right to withhold.

For these reasons, the court of appeals erred in failing to award *The News* its attorneys' fees under the UDJA.

### **PRAYER**

For the foregoing reasons, the Comptroller's Petition for Review should be denied. In the alternative, should the Court grant review, the court of appeals should be reversed on *The News*' claim for its attorneys' fees. *The News* should have been awarded its attorneys' fees under either the TPIA or Chapter 37 of the Texas Civil Practice and Remedies Code in light of the trial court's declaratory judgment in favor of *The News* on the merits. *The News* also respectfully prays for such further relief, general or special, to which it may be justly entitled.

Respectfully submitted,

Dated: November 3, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of November, 2008 a true and correct copy of the foregoing was served on all counsel of record listed below in accordance with Rule 9.5(c) of the Texas Rules of Appellate Procedure via certified mail, return receipt requested:

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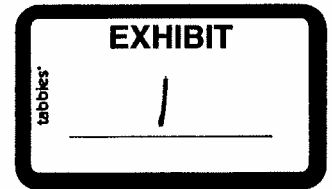
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# **APPENDIX**

TEXAS BILL TEXT



VERSION: Introduced

March 09, 2007  
Duncan

80R5345 MTB-F  
By: Duncan S.B. No. 1848

A BILL TO BE ENTITLED

AN ACT relating to state fiscal matters.

TEXT:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 103.002, Code of Criminal Procedure, is amended to read as follows:

Art. 103.002. CERTAIN COSTS BARRED. (a) An officer may not impose a cost for a service not performed or for a service for which a cost is not expressly provided by law. (b) If a person has paid a cost for a service that is not expressly provided by law, the money paid for the cost must first be applied to any unpaid statutory court costs that the person owes, then to other unpaid costs, fees, and fines imposed in the person's case that the person owes. Any remaining money must be refunded to the person making the payment. If the money cannot be refunded to the person making the payment, it must be remitted to the comptroller in accordance with Chapter 133, Local Government Code, for deposit in the general revenue fund. SECTION 2. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0021 to read as follows: Art.103.0021.ALLOCATION OF PARTIAL PAYMENTS. If the payment tendered by a person for court costs, fees, and fines in the person's criminal case is not adequate to cover the total amount of all obligations due, the payment shall be allocated to state court costs first and the remainder applied to other costs, fees, and fines due in the case.

SECTION 3. Article 103.0031(e), Code of Criminal Procedure, is amended to read as follows:

(e) If a county or municipality has entered into a contract under Subsection (a) and a person pays an amount that is less than the aggregate total to be collected under Subsections (a) and (b), [the allocation to the comptroller, the county or municipality, and] the private attorney or vendor shall receive 30 percent of the aggregate amount collected, not to exceed the amount added as the collection fee, and the remainder of the amount collected shall be allocated in accordance with Article 103.0021 [be reduced proportionately].

SECTION 4. Section 43.001(b), Education Code, as amended by Chapters 201 and 328,

Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of: (1) the distributions to the fund from the permanent school fund as provided by Section 5(a), Article VII, Texas Constitution; (2) [one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection; [(3)] one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and (3) [(4)] all other appropriations to the available school fund made by the legislature for public school purposes.

SECTION 5. Section 43.002(a), Education Code, is amended to read as follows:

(a) On the first working day of each month in a state fiscal year, the **agency** [comptroller] shall transfer from the permanent school fund to the available school fund an amount equal to one-twelfth of the annual distribution from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, for the fiscal year.

SECTION 6. Section 57.48(k)(1), Education Code, is amended to read as follows:

(1) 'Compensation' means base salary or wages, longevity pay, hazardous duty pay, benefit replacement pay, **a retirement annuity**, or an emolument provided in lieu of base salary or wages.

SECTION 7. Section 63.202, Education Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), [and] (d), **and (h)**, money in the fund established under this subchapter may not be used for any purpose. **(h) Expenses of managing and administering the assets of the fund shall be paid from the fund.**

SECTION 8. Section 63.302, Education Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), [and] (e), **and (h)**, money in the fund established under this subchapter may not be used for any purpose. **(h) Expenses of managing and administering the assets of the fund shall be paid from the fund.**

SECTION 9. Sections 231.007(c) and (d), Family Code, are amended to read as follows:

(c) The Title IV-D agency is the sole assignee of [all] payments, including payments of compensation, by the state to a person indebted to the state under Subsection (a) **if the comptroller is not responsible for issuing warrants or initiating electronic funds transfers to make those payments.** (d) On request of the Title IV-D agency, [: [(1) the comptroller shall make payable and deliver to the agency any payments for which the agency is the assignee under Subsection (c), if the comptroller is responsible for issuing warrants or initiating electronic



funds transfers to make those payments; and [(2)] a state agency shall make payable and deliver to the Title IV-D agency any payments for which the Title IV-D agency is the assignee under Subsection (c) [if the comptroller is not responsible for issuing warrants or initiating electronic funds transfers to make those payments].

SECTION 10. Sections 25.0015(b) and (c), Government Code, are amended to read as follows:

(b) For a county that participates under Section 51.702(f) under a resolution adopted and filed with the comptroller before September 1, 2003, the amount shall be paid to the county's salary fund in equal **quarterly** [monthly] installments, and of each \$35,000 paid a county, \$30,000 shall be paid from funds appropriated from the judicial fund, and \$5,000 shall be paid from funds appropriated from the general revenue fund. (c) For a county that participates under Section 51.702(f) under a resolution adopted or filed with the comptroller on or after September 1, 2003, the amount shall be paid to the county's salary fund in equal **quarterly** [monthly] installments from funds appropriated from the judicial fund.

SECTION 11. Section 25.00211(b), Government Code, is amended to read as follows:

(b) The amount shall be paid to the county treasury for deposit in the contributions fund created under Section 25.00213 in equal **quarterly** [monthly] installments from funds appropriated from the judicial fund.

SECTION 12. Section 26.007(b), Government Code, is amended to read as follows:

(b) The amount shall be paid to the county's salary fund in equal **quarterly** [monthly] installments from funds appropriated from the judicial fund.

SECTION 13. Section 74.061(d), Government Code, is amended to read as follows:

(d) For services actually performed while assigned under this chapter, a [retired or] former judge or justice shall receive from county funds and money appropriated by the legislature the same amount of salary, compensation, and expenses that the regular judge is entitled to receive from the county and from the state for those services. The presiding judge of the administrative region shall certify to the county and the state the services rendered under this chapter by a [retired or] former judge or justice and the share to be paid by the state. The amount certified by the presiding judge as the state's share shall be paid from an item in the **Judiciary Section, Comptroller's** [Judicial Section--Comptroller's] Department of the General Appropriations Act for the payment of salaries of district and criminal district judges.

SECTION 14. Section 403.016(b), Government Code, is amended to read as follows:

(b) The comptroller shall use the electronic funds transfer system to pay an employee's net state salary and travel expense reimbursements unless: (1) the employee does not hold a classified position under the state's position classification plan and the employee's [gross state] salary is less than the **minimum** [gross state] salary **of** [for a position classified to] group 8[,step 1,] of

**Salary** **Schedule A of the General Appropriations Act** [state position classification plan]; or (2) the employee holds a classified position under the state's position classification plan **and the position is allocated to a group with a minimum salary of less than the minimum salary of** [that is classified below] group 8 **of Salary Schedule A of the General Appropriations Act.**

SECTION 15. Section 403.055(1)(1), Government Code, is amended to read as follows:

(1) 'Compensation' means base salary or wages, longevity pay, hazardous duty pay, benefit replacement pay, **a retirement annuity**, or an emolument provided in lieu of base salary or wages.

SECTION 16. Section 403.0551(d), Government Code, is amended to read as follows:

(d) This section does not authorize the comptroller to deduct the amount of a state employee's indebtedness to a state agency from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. In this subsection: [,] **(1) 'compensation[,]' has the meaning assigned by Section 403.055; and (2) 'indebtedness,' 'state agency,' 'state employee,' and 'successor' have the meanings assigned by Section 666.001.**

SECTION 17. Sections 403.071(g) and (h), Government Code, are amended to read as follows:

(g) Notwithstanding Subsection (a), the comptroller [and a state agency] may [contract in writing for the comptroller to] audit claims presented by **a** [the] state agency after the comptroller prepares warrants or uses the electronic funds transfer system to pay the claims. **The** [If the comptroller and a state agency execute a contract, the] comptroller may **determine** [decide] the types of claims that will be audited after payment. (h) [This subsection applies if the comptroller and a state agency have contracted in accordance with Subsection (g).] The comptroller shall audit claims after payment **under Subsection (g)** in the same **manner** [way] that the comptroller audits claims before payment under Subsection (a). The comptroller may establish requirements and adopt rules concerning the time that a state agency must retain documentation in its files to enable a postpayment audit. If a postpayment audit by the comptroller shows that a claim presented by a state agency was invalid, the comptroller may: (1) implement procedures to ensure that similar invalid claims from the state agency are not paid in the future; (2) report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the Legislative Budget Board the results of the audit; (3) require the state agency to obtain a refund of the monies from the payee; **and** (4) [cancel the contract with the state agency; and [(5)] reduce the state agency's remaining appropriations by the amount of the claim.

SECTION 18. Section 404.024, Government Code, is amended by amending Subsections (b) and (1) and adding Subsections (m) and (n) to read as follows:

(b) State funds not deposited in state depositories shall be invested by the comptroller in: (1) direct security repurchase agreements; (2) reverse security repurchase agreements; (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; (4) direct obligations of or

obligations guaranteed by agencies or instrumentalities of the United States government; (5) bankers' acceptances that: (A) are eligible for purchase by the Federal Reserve System; (B) do not exceed 270 days to maturity; and (C) are issued by a bank whose other comparable short-term obligations are rated in [that has received] the highest short-term [credit] rating category, within which there may be subcategories or gradations indicating relative standing, including such subcategories or gradations as 'rating category' or 'rated,' by a nationally recognized statistical rating organization, as defined by Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 by the Securities and Exchange Commission [investment rating firm]; (6) commercial paper that: (A) does not exceed 270 days to maturity; and (B) except as provided by Subsection (i), is issued by an entity whose other comparable short-term obligations are rated in [has received] the highest short-term [credit] rating category by a nationally recognized statistical rating organization [investment rating firm]; (7) contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading; (8) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest long-term [credit] rating categories for debt obligations by a nationally recognized statistical rating organization [investment rating firm]; (9) bonds issued, assumed, or guaranteed by the State of Israel; (10) obligations of a state or an agency, county, city, or other political subdivision of a state; (11) mutual funds secured by obligations that are described by Subdivisions (1) through (6) or by obligations consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated by the Securities and Exchange Commission, including pooled funds: (A) established by the Texas Treasury Safekeeping Trust Company; (B) operated like a mutual fund; and (C) with portfolios consisting only of dollar-denominated securities; [and] (12) foreign currency for the sole purpose of facilitating investment by state agencies that have the authority to invest in foreign securities; (13) asset-backed securities, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), that are rated at least A or its equivalent by a nationally recognized statistical rating organization and that have a weighted-average maturity of five years or less; and (14) corporate debt obligations that are rated at least A or its equivalent by a nationally recognized statistical rating organization and mature in five years or less from the date on which the obligations were 'acquired,' as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7). (1) The comptroller may lend securities under procedures established by the comptroller. The procedures must be consistent with industry practice and must include a requirement to fully secure the loan with cash, obligations described by Subsections (b) (1)-(6), or a combination of cash and the described obligations. Notwithstanding any law to the contrary, cash may be reinvested in the items permitted under Subsection (b) or mutual funds, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7) [In this subsection, 'obligation' means an item described by Subsections (b) (1)-(6)]. (m) In entering into a direct security repurchase agreement or a reverse security repurchase agreement, the comptroller may agree to accept cash on an overnight basis in lieu of the securities, obligations, or participation certificates identified in Section 404.001(3). Cash held by the state under this subsection is not a deposit of state or public funds for purposes of any statute,

including this subchapter or Subchapter D, that requires a deposit of state or public funds to be collateralized by eligible securities. (n) Notwithstanding any other law to the contrary, any government investment pool created to function as a money market mutual fund and managed by the comptroller or the Texas Treasury Safekeeping Trust Company may invest the funds it receives in investments that are 'eligible securities,' as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), if it maintains a dollar-weighted average portfolio maturity of 90 days or less, with the maturity of each portfolio security calculated in accordance with Rule 2a-7 (17 C.F.R. Section 270.2a-7), and meets the diversification requirements of Rule 2a-7.

SECTION 19. The heading to Section 552.024, Government Code, is amended to read as follows:

Sec. 552.024. ELECTING TO DISCLOSE ADDRESS, [AND] TELEPHONE NUMBER, DATE OF BIRTH, SOCIAL SECURITY NUMBER, AND PERSONAL FAMILY INFORMATION.

SECTION 20. Section 552.024(a), Government Code, is amended to read as follows:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, date of birth, or social security number, or that reveals whether the person has family members.

SECTION 21. The heading to Section 552.117, Government Code, is amended to read as follows:

Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, DATES OF BIRTH, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

SECTION 22. Section 552.117(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, date of birth, or social security number of the following person or that reveals whether the person has family members: (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; (3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175; (4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175; or (5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable.

SECTION 23. The heading to Section 552.1175, Government Code, is amended to read as follows:

Sec. 552.1175. CONFIDENTIALITY OF ADDRESSES, TELEPHONE NUMBERS, **DATES OF BIRTH**, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR A PROSECUTOR'S OFFICE.

SECTION 24. Section 552.1175(b), Government Code, is amended to read as follows:

(b) Information that relates to the home address, home telephone number, **date of birth**, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates: (1) chooses to restrict public access to the information; and (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

SECTION 25. Section 552.132(b), Government Code, is amended to read as follows:

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to: (1) the name, social security number, **date of birth**, address, or telephone number of the crime victim; or (2) any other information the disclosure of which would identify or tend to identify the crime victim.

SECTION 26. Section 552.1325(b), Government Code, is amended to read as follows:

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential: (1) the name, social security number, **date of birth**, address, and telephone number of a crime victim; and (2) any other information the disclosure of which would identify or tend to identify the crime victim.

SECTION 27. Section 552.138(b), Government Code, is amended to read as follows:

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to: (1) the home address, home telephone number, **date of birth**, or social security number of an employee or a volunteer worker of a family violence shelter center or a sexual assault program, regardless of whether the employee or worker complies with Section 552.024; (2) the location or physical layout of a family violence shelter center; (3) the name, home address, home telephone number, **date of birth, or social security number** or **other** numeric identifier of a current or former client of a family violence shelter center or sexual assault program; (4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program; (5) the name, home address, [or] home telephone number, **date of birth, or social**

security number or other numeric identifier of a private donor to a family violence shelter center or sexual assault program; or (6) the home address, [or] home telephone number, date of birth, or social security number of a member of the board of directors or the board of trustees of a family violence shelter center or sexual assault program, regardless of whether the board member complies with Section 552.024. SECTION 28. Subchapter A, Chapter 659, Government Code, is amended by adding Section 659.007 to read as follows: **Sec. 659.007. EARNINGS STATEMENTS. (a) In this section, 'state agency' has the meaning assigned by Section 403.013. (b) A state agency may provide a written or electronic earnings statement to an officer or employee of the agency. (c) The comptroller may adopt rules and establish procedures concerning the earnings statements provided by state agencies that under Subchapter C, Chapter 2101, are required to use the uniform statewide payroll system.**

SECTION 29. Section 659.044(e), Government Code, is amended to read as follows:

(e) This subsection applies only to an employee of the Texas Youth Commission who is receiving less than the maximum amount of hazardous duty pay that the commission may pay to the employee under Section 659.303. The employee's monthly amount of longevity pay is the sum of: (1) \$20 [\$4] for every two years [each year] of lifetime service credit, which may not include any period served in a hazardous duty position; and (2) the lesser of: (A) \$20 [\$4] for every 24 months of lifetime service credit accrued under Section 659.307(a) [each year served in a hazardous duty position]; or (B) the difference between: (i) \$10 [\$7] for each 12-month period of lifetime service credit accrued under Section 659.307(a) [year served in a hazardous duty position]; and (ii) the amount paid by the commission for each 12-month period of lifetime service credit accrued under Section 659.307(a) [year served in a hazardous duty position].

SECTION 30. (a) Section 659.046, Government Code, is amended by adding Subsection (g) to read as follows:

**(g) For purposes of Subsection (a) (4), an employee's service as an academic employee of a state institution of higher education includes a summer semester or session during which the employee is not required to provide services to the institution if: (1) the employee provided services to the institution throughout the immediately preceding spring and fall semesters; and (2) the employee resumes providing services to the institution at the beginning of the first fall semester occurring after the summer semester or session.** (b) The changes in law made by Subsection (a) of this section to Section 659.046, Government Code, apply beginning with the first summer semester or session that occurs during calendar year 2007.

SECTION 31. Section 659.255(a)(3), Government Code, is amended to read as follows:

(3) 'Merit salary increase' means an increase in compensation to: (A) a higher step rate in the same classified salary group, if the classified employee is compensated under a salary group that is divided into steps [Salary Schedule A of the General Appropriations Act]; or (B) a higher rate within the range of the same classified salary group, if the classified employee is compensated under a salary group that is not divided into steps [Salary Schedule B of the General Appropriations Act].

SECTION 32. Sections 659.256(c) and (f), Government Code, are amended to read as follows:

(c) When an employee is promoted **within** [to a position in a higher salary group in] Salary Schedule A of the General Appropriations Act **or from Salary Schedule B or C of the General Appropriations Act to Salary Schedule A of the General Appropriations Act**, the employee shall receive a salary rate **that is** at least **3.4 percent** [one step] higher than the employee's salary rate before promotion or the minimum rate of the new salary range, whichever is higher, and may, at the discretion of the state agency administrator, receive an annual salary rate up to and including the maximum rate of the new salary range. [When an employee is promoted from a position in Salary Schedule B or C of the General Appropriations Act to a position in Salary Schedule A of the General Appropriations Act, the employee shall receive a step rate that is at least one step above the rate the employee received before promotion or the minimum rate of the new salary range, whichever is higher, and may, at the discretion of the state agency administrator, receive an annual rate up to and including the maximum rate of the new salary range.] (f) Notwithstanding the other provisions of this section, an employee whose salary prior to promotion exceeds the maximum rate of the employee's assigned salary group may not receive more than the maximum rate of the new salary group, even if the increase is less than one step in **a salary group that is divided into steps** [Salary Schedule A of the General Appropriations Act] or 3.4 percent in **a salary group that is not divided into steps** [Salary Schedule B of the General Appropriations Act].

SECTION 33. Section 659.257(c), Government Code, is amended to read as follows:

(c) When an employee is demoted **within** [to a position in a lower salary group in] Salary Schedule A of the General Appropriations Act **or from Salary Schedule B or C of the General Appropriations Act to Salary Schedule A of the General Appropriations Act**, the employee will receive a salary rate **of** at least **3.4 percent** [one step] below the rate the employee received before demotion. [When an employee is demoted from a position in Salary Schedule B or C of the General Appropriations Act to a position in Salary Schedule A of the General Appropriations Act, the employee shall receive a step rate that is at least 3.4 percent below the rate the employee received before demotion.]

SECTION 34. Section 660.024(a), Government Code, is amended to read as follows:

(a) The chief administrator of a state agency must give advance written approval for any travel related to official state business for which a reimbursement for travel expenses is claimed or for which an advance for travel expenses to be incurred is sought. **The advance written approval may be communicated electronically.** [A copy of the written approval shall be submitted with the travel voucher to the comptroller in accordance with Section 660.027.]

SECTION 35. Sections 660.027(b), (d), and (e), Government Code, are amended to read as follows:

(b) A voucher submitted under Subsection (a) is valid only if: (1) the state agency submitting the voucher approves it in accordance with Chapter 2103 and, if required

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by law, certifies the voucher; and (2) the state employee who incurred the travel expense or, if the employee is unavailable, another individual acceptable to the comptroller approves the **description, information, and documentation required by Subsection (d)** [voucher] in writing or electronically, **except that the employee's approval is not required if another person is required by law to provide the approval.** (d) A voucher must **be supported by:** (1) a description of [describe] the official state business performed; and (2) [be accompanied by] the information **and documentation that the comptroller considers** necessary for the comptroller to determine compliance with this chapter, the travel provisions of the General Appropriations Act, and the rules adopted by the comptroller under this chapter. (e) The comptroller may require a state agency to provide **to the comptroller** the **description, information, and documentation** required **under** [by] Subsection (d): (1) on the form adopted by the comptroller under Subsection (c); (2) **electronically;** (3) by submitting receipts **or other documents;** or (4) [(3)] by **any** [a] combination of Subdivisions (1) [and] (2), **and (3).**

SECTION 36. Section 660.028, Government Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (e) to read as follows:

(b) If the comptroller audits a state agency's voucher after the comptroller issues a warrant or initiates an electronic funds transfer in response to the voucher, the comptroller may require the agency to maintain in its files the **description, information, and documentation** [receipts] relating to the **travel expense paid or reimbursed by the voucher** until the comptroller audits the voucher. (c) If a state agency pays or reimburses a travel expense without first submitting a voucher to the comptroller, the comptroller may audit the payment or reimbursement for compliance with this chapter and the travel provisions of the General Appropriations Act. The comptroller may report the results of the audit to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the Legislative Budget Board. The state agency shall cooperate with the comptroller and make available the **description, information, and documentation** [receipts] required by the comptroller at the time and in the manner required by the comptroller. (d) The comptroller may require a state agency to maintain in its files the **description, information, and documentation** [receipts] regarding a travel expense payment or reimbursement for the period required by the comptroller. **(e) The comptroller may require or authorize the description, information, and documentation relating to a travel expense payment or reimbursement to be maintained in paper form or electronically.** SECTION 37. The heading to Subchapter C, Chapter 661, Government Code, is amended to read as follows:

SUBCHAPTER C. PAYMENT FOR VACATION **LEAVE** [TIME]

TO

STATE EMPLOYEES WHO SEPARATE FROM STATE EMPLOYMENT

SECTION 38. Section 661.062, Government Code, is amended to read as follows:

Sec. 661.062. ENTITLEMENT TO PAYMENT FOR VACATION **LEAVE** [TIME]. (a) A state employee who, at any time during the employee's lifetime, has accrued six months of



continuous state employment [and who resigns, is dismissed, or otherwise separates from state employment by a state agency other than an institution of higher education] is entitled to be paid for [the accrued balance of] the employee's accrued vacation leave [time as of the date of the separation,] if: (1) the employee resigns or is dismissed from a position in a state agency that is not an institution of higher education without, during the 30-day period immediately following the effective date of the resignation or dismissal: (A) accepting a position at another state agency; and (B) resuming state employment in a position that accrues vacation leave; (2) the employee resigns or is dismissed from a position in a state agency that is an institution of higher education without: (A) having accepted a position at another state agency; and (B) resuming state employment in a position that accrues vacation leave on the first workday immediately following the effective date of the resignation or dismissal; (3) the employee moves from a position in a state agency that accrues vacation leave to another position within the same state agency that does not accrue vacation leave and the agency agrees to pay the employee for the accrued leave; (4) the employee moves from a position in a state agency that accrues vacation leave to a position in a different state agency that does not accrue vacation leave and the second agency refuses to credit the employee for the accrued leave; (5) the employee moves from a position in a state agency that is not an institution of higher education to a position in a different state agency that accrues vacation leave and the first day of employment in the second position is at least 31 days after the last day of employment in the first position; (6) the employee moves from a position in an institution of higher education to a position in a different state agency that accrues vacation leave and the first day of employment in the second position is at least two workdays after the last day of employment in the first position; or (7) the employee holds two or more positions in a state agency, the employee resigns or is dismissed from a position that accrues vacation leave, and the agency agrees to pay the employee for the accrued leave. [the individual is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period immediately following the date of separation from state employment. A state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who resigns, is dismissed, or otherwise separates from state employment by an institution of higher education is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation.] (b) For purposes of this section, the amount of a state employee's accrued vacation leave is the amount existing on the date the event occurs that entitles the employee to be paid for the employee's accrued vacation leave. [A separation from state employment includes a separation in which the employee: [(1) leaves one state agency to begin working for another state agency, if one or more workdays occur between the two employments and the individual is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period immediately following the date of separation from state employment; [(2) moves from a position in a state agency that accrues vacation time to a position in that agency that does not accrue vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time; [(3) moves from a position in a state agency that accrues vacation time to a position in another state agency that does not accrue vacation time, if the other state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; [(4) moves from a position in a state agency that does not accrue vacation time to a position in another state agency that does not accrue vacation time, if the other state agency is not authorized or refuses to credit the employee for the balance of the employee's

vacation time as of the date of the move; or [(5) holds two or more positions, and separates from one that accrues vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time.] (c) The state agency to which a state employee moves shall credit the employee for the employee's accrued vacation leave if the employee is not entitled under Subsection (a) (3) or (4) to receive payment for that leave. (d) A state employee who holds two or more positions is entitled to be paid for the employee's accrued vacation leave concerning a particular [separation under Subsection (b) (4) applies only with respect to the] position only if the event entitling the employee to receive the payment relates to the position that accrues vacation leave, as provided in Subsection (a) [from which the separation occurs]. (e) [(d)] State employment is continuous for purposes of this section [Subsection (a)] while the employee is entitled to be paid a regular state salary, except that continuity of state employment is not interrupted while the employee is on a leave of absence without pay for less than one calendar month. (f) [(e)] The following are ineligible [not entitled] to receive a payment [payments] under this subchapter: (1) an individual who holds an office that is normally filled by vote of the people; (2) an independent contractor or an employee of an independent contractor; (3) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team; (4) an individual employed on a piecework basis; or (5) an individual covered by: (A) the Judicial Retirement System of Texas Plan One; (B) the Judicial Retirement System of Texas Plan Two; or (C) the Teacher Retirement System of Texas, other than an individual described by Section 661.061(2)(E) or (F). (g) An employee of a legislative agency is eligible or entitled to receive payment for the employee's accrued [(f) Payment for accrued] vacation leave only as provided by the administrative head of that agency. An employee of the house of representatives or of a member of the house of representatives is eligible or entitled to receive payment for the employee's accrued vacation leave only as provided by the speaker of the house of representatives. An employee of the senate, of a member of the senate, or of the lieutenant governor is eligible or entitled to receive payment for the employee's accrued vacation leave only as provided by the lieutenant governor [for employees of the legislative branch, including employees of the lieutenant governor, is determined as follows: [(1) for employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and [(2) for employees of a legislative agency, by the administrative head of the agency].

SECTION 39. Sections 661.063(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the payment to a state employee under this subchapter shall be computed by multiplying the employee's rate of compensation on the date the event occurs that entitles the employee to be paid for the employee's accrued vacation leave [of separation from state employment] by the total number of hours of vacation leave [time] determined under Section 661.064. (b) The payment under this subchapter to a state employee who resigns, is dismissed, or moves to another position from [separates from state employment while holding] a position that does not accrue vacation leave [time] shall be computed according to this subsection. The employee's final rate of compensation in the last position held that accrues vacation leave [time] shall be multiplied by the employee's total number of hours of vacation leave [time] determined under Section

661.064.

SECTION 40. Section 661.064, Government Code, is amended to read as follows:

Sec. 661.064. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME. (a) This subsection applies except as provided by Subsection (c). For a state employee who, on the date the event occurs that entitles the employee to be paid for the employee's accrued vacation leave, [of separation] is normally scheduled to work at least 40 hours a week, eight hours are to be added to the employee's accrued vacation leave [time] for each state or national holiday that is scheduled to fall within the period after the date of the event [separation] and during which the employee could have used the leave [time]. To determine the period during which vacation leave [time] could have been used and the number of state or national holidays, the employee's vacation leave [time] is allocated over the workdays after the date of the event [employee's separation] and eight hours are added as a state or national holiday occurs during the period. (b) For a state employee who, on the date the event occurs that entitles the employee to be paid for the employee's accrued vacation leave, [of separation] is normally scheduled to work less than 40 hours a week, the number of hours that is to be added to the employee's accrued vacation leave [time] for each state or national holiday is computed as provided by Subsection (a), but is to be proportionally reduced according to the lesser number of the employee's normally scheduled weekly work hours. (c) For a state employee who is paid under this subchapter because the event that entitles the employee to be paid for the employee's accrued vacation leave [separation from state employment] involves a move to a position in a state agency that does not accrue vacation leave [time], no hours may be added to the employee's accrued vacation leave [time] for a state or national holiday that [which] is scheduled to fall within the period after the date of the event [separation] and during which the employee could have used the leave [time].

SECTION 41. Section 661.066, Government Code, is amended to read as follows:

Sec. 661.066. PAYMENT CHARGED TO CERTAIN FISCAL YEAR. A state agency shall charge a lump-sum payment required by this subchapter to the fiscal year in which the event occurs that entitles the employee to be paid for the employee's accrued vacation leave [state employee's separation from state employment becomes effective].

SECTION 42. Section 661.067, Government Code, is amended to read as follows:

Sec. 661.067. AGREEMENT FOR STATE EMPLOYEE TO REMAIN ON AGENCY PAYROLL. (a) A state agency may agree to permit an employee entitled to payment under this subchapter to remain on the agency's payroll to exhaust the employee's accrued vacation leave [time]. (b) A state employee who remains on the payroll of a state agency under this section: (1) is entitled to continue to receive all compensation and benefits that the state employee was receiving on the employee's last day of duty, including paid holidays, longevity pay, and hazardous duty pay; (2) is entitled to a general salary increase for state employees that takes effect before the employee's accrued vacation leave [time] is exhausted; and (3) may not use sick leave or accrue sick leave or vacation leave [time]. SECTION 43. The heading to Subchapter D, Chapter 661, Government Code, is amended to read as follows:

SUBCHAPTER D. PAYMENTS FOR VACATION **LEAVE** [TIME]

TO CONTRIBUTING MEMBERS OF EMPLOYEES RETIREMENT SYSTEM WHO

RETIRE

SECTION 44. Section 661.091, Government Code, is amended to read as follows:

Sec. 661.091. PAYMENT FOR VACATION **LEAVE** [TIME] ON RETIREMENT. (a) A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for the member's accrued vacation **leave** [time] as of the date of retirement. (b) A payment required by this section is payable on the date of retirement.

SECTION 45. Section 661.092, Government Code, is amended to read as follows:

Sec. 661.092. COMPUTATION OF PAYMENT. A payment required by this subchapter shall be computed **as provided by Section 661.063** [as if the member had taken vacation time, using the member's rate of compensation as of the date of retirement].

SECTION 46. Section 662.010, Government Code, is amended to read as follows:

Sec. 662.010. HOLIDAY BEFORE WORK BEGINS OR AFTER WORK ENDS. (a) An individual **who is** [must be] a state employee on the **first** workday [before and] after a state or national holiday **may not** [in order to] be paid for that holiday **if: (1) the individual is not a state employee on the last workday before the holiday; and (2) [ , unless] the holiday and the [falls on the employee's] first [or last] workday after the holiday occur during different months [of the month].** (b) **An individual who is a state employee on the last workday before a state or national holiday may not be paid for that holiday if: (1) the individual is not a state employee on the first workday after the holiday; and (2) the holiday and the last workday before the holiday occur during different months.** (c) [(b)] In this section, 'state employee': (1) includes an individual who uses paid leave from a state agency; and (2) does not include an individual who uses unpaid leave from a state agency.

SECTION 47. Subchapter A, Chapter 2103, Government Code, is amended by adding

Section 2103.005 to read as follows: **Sec.2103.005.CONFLICTS OF LAW. This chapter prevails over all other law to the extent of any conflict.**

SECTION 48. Chapter 2107, Government Code, is amended by adding Section 2107.009 to read as follows:

**Sec.2107.009.DEDUCTIONS FOR REPAYMENT OF CERTAIN DEBTS OR TAX DELINQUENCIES.** (a) Except as provided by this section, a state agency may deduct the amount of a person's indebtedness to the state or tax delinquency from any amount the agency owes the person or the person's successor. The state agency shall pay to the person or successor any amount remaining after the deduction. (b) Subsection (a) applies to a person or the person's successor only if: (1) the state agency has provided notice to the person or successor that complies with Subsection (c); (2) **Section 57.48, Education Code, or Section 403.055** of this code prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to the person or successor; and (3) the comptroller is not responsible under **Section 404.046, 404.069, or 2103.003** for paying the amount owed by the state agency to the person or successor through the issuance of a warrant or initiation

of an electronic funds transfer. (c) A state agency shall provide notice to a person or the person's successor before deducting the amount of the person's indebtedness to the state or tax delinquency under Subsection (a). The notice must: (1) be given in a manner reasonably calculated to give actual notice to the person or successor; (2) state the: (A) amount of the indebtedness or the amount of the tax, penalties, interest, and costs due, as applicable; and (B) name of the indebted or delinquent person; (3) specify the deadline for paying the amount due; and (4) inform the person or successor that unless the amount due is paid before the deadline, the state agency will deduct the amount of the indebtedness or delinquency from the amount the agency owes the person or successor. (d) This section does not authorize a state agency to deduct the amount of a state employee's indebtedness to the state from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. In this subsection: (1) 'compensation' has the meaning assigned by Section 403.055; and (2) 'indebtedness,' 'state agency,' 'state employee,' and 'successor' have the meanings assigned by Section 666.001. (e) A state agency shall credit the appropriate fund or account for any amount deducted under this section if the agency is the custodian or trustee of that fund or account. The agency shall remit any amount deducted under this section to the custodian or trustee of the appropriate fund or account if the agency is not its custodian or trustee. (f) The comptroller may determine the order that a person's multiple types of indebtedness to the state or tax delinquencies are deducted from the amount a state agency owes the person or the person's successor. (g) The assignee of a person or the person's successor is considered to be a successor of the person for the purposes of this section, except that a deduction under this section from the amount owed to the assignee of a person or the person's successor may not be made if the assignment became effective before the person became indebted to the state or incurred the tax delinquency. (h) Except as provided by this section, a state agency may adopt rules and establish procedures concerning deductions made by the agency under this section. To the extent of any conflict, rules adopted or procedures established by the comptroller under Subsection (i) prevail over the agency's rules or procedures. (i) The comptroller may adopt rules and establish procedures to administer Subsection (f). (j) Except as provided by Subsection (d), in this section 'successor' means a person's estate and the distributees of that estate.

SECTION 49. Section 2115.001(1), Government Code, is amended to read as follows:

(1) 'Overpayment' includes a duplicate payment made to a vendor for a single invoice and a payment made to a vendor: (A) when an available discount from the vendor was not applied; (B) for a late payment penalty that was improperly applied by the vendor; (C) for shipping costs that were computed incorrectly or incorrectly included in an invoice; (D) for a [state sales] tax or fee that the state is not required to pay under applicable law, except that the term does not include a tax or fee imposed under a law of this state; or (E) for a good or service the vendor did not provide.

SECTION 50. The heading to Section 2115.003, Government Code, is amended to read as follows:

Sec. 2115.003. SCOPE OF [STATE AGENCIES SUBJECT TO] MANDATORY RECOVERY AUDITS.

SECTION 51. Section 2115.003(b), Government Code, is amended to read as follows:

(b) The comptroller may exempt from the mandatory recovery audit process a state agency or a type of payment: (1) if the comptroller determines, in accordance with [that has a low proportion of its expenditures made to vendors, according to] criteria the comptroller adopts by rule, that the exemption would be in the best interests of the state; or (2) by rule [after consideration of the likely costs and benefits of performing recovery audits for agencies that make relatively few or small payments to vendors].

SECTION 52. Section 2115.004(a), Government Code, is amended to read as follows:

(a) A state agency shall pay[, from recovered money appropriated for the purpose,] the recovery audit consultant responsible for obtaining for the agency a reimbursement from a vendor. Unless otherwise prohibited by law, the payment must be made from recovered money.

SECTION 53. Section 117.002, Local Government Code, is amended to read as follows:

Sec. 117.002. TRANSFER OF UNCLAIMED FUNDS TO COMPTROLLER. Any funds deposited under this chapter[, except cash bail bonds,] that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be reported and delivered by the county or district clerk to the comptroller without further action by any court. The dormancy period for funds deposited under this chapter begins on the later of: (1) the date of entry of final judgment or order of dismissal in the action in which the funds were deposited; (2) the 18th birthday of the minor for whom the funds were deposited; or (3) a reasonable date established by rule by the comptroller to promote the public interest in disposing of unclaimed funds.

SECTION 54. Section 74.202, Property Code, is amended to read as follows:

Sec. 74.202. NOTICE FOR ITEM WITH VALUE OF LESS THAN \$200 [\$100]. In the notice required by Section 74.201, the comptroller is not required to publish information regarding an item having a value that is less than \$200 [\$100] unless the comptroller determines that publication of that information is in the public interest.

SECTION 55. Section 74.101(a), Property Code, is amended to read as follows:

(a) Each holder who on June 30 holds property that is presumed abandoned under Chapter 72, 73, or 75 of this code or under Chapter 154, Finance Code, shall file a report of that property on or before the following November 1. The comptroller may require the report to be in a particular format, including an electronic [a] format that can be read by a computer. The comptroller may adopt rules to establish threshold requirements for electronic filing by holders.

SECTION 56. Section 74.301, Property Code, is amended by adding Subsection (d) to read as follows:

**(d) The comptroller may require holders to electronically transmit money subject to delivery under Subsection (a). The comptroller may adopt rules to establish the threshold requirement for electronic transmission of money by holders.**

SECTION 57. Section 74.401(a), Property Code, is amended to read as follows:

(a) Except as provided by Subsection (c) or Section 74.404, the comptroller shall sell at public sale all personal property, other than money and [marketable] securities, delivered to the comptroller in accordance with Section 74.301. The comptroller shall conduct the sale in the city in this state that the comptroller determines affords the most favorable market for the particular property.

SECTION 58. Section 74.601, Property Code, is amended by adding Subsection (g) to read as follows:

**(g) If an owner does not assert a claim for unclaimed money and the owner is reported to be the state or a state agency, the comptroller may deposit the unclaimed money to the credit of the general revenue fund. The comptroller may establish procedures and adopt rules as necessary to implement this section.**

SECTION 59. The following laws are repealed: (1) Section 43.020, Education Code; (2) Section 661.093, Government Code; (3) Chapter 2112 [FN1], Government Code; and (4) Section 2103.063, Government Code. SECTION 60. (a) The changes in law made by this Act to Sections 552.024, 552.117, 552.1175, 552.132, 552.1325, and 552.138, Government Code, apply to information, records, and notations collected, made, assembled, or maintained on, before, or after the effective date of this Act. (b) The changes in law made by this Act to Sections 552.024, 552.117, 552.1175, 552.132, 552.1325, and 552.138, Government Code, apply to a request for information that is received by a governmental body on, before, or after the effective date of this Act. (c) In this section, 'governmental body' has the meaning assigned by Section 552.003, Government Code. SECTION 61. A rule adopted by the comptroller of public accounts before the effective date of the changes made by this Act to Chapter 2115, Government Code, is not required to be readopted by the comptroller if the rule is consistent with that chapter as amended by this Act. This section applies only to a rule adopted to administer that chapter. SECTION 62. (a) Except as provided by Subsection (e) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. (b) If this Act does not receive the vote necessary for immediate effect, the changes to or additions or repeal of the following laws made by this Act take effect on the 91st day after the last day of the legislative session: (1) Section 57.48, Education Code; (2) Section 231.007, Family Code; (3) Sections 403.055, 403.0551, 552.024, 552.117, 552.1175, 552.132, 552.1325, 552.138, 659.044, 659.046, 661.062, 661.063, 661.064, 661.066, 661.067, 661.091, 661.092, 661.093, 662.010, 2103.063, 2107.009, 2115.001, 2115.003, and 2115.004, Government Code; (4) the headings for Subchapters C and D, Chapter 661, Government Code; and (5) Chapter 2112, Government Code. (c) If this Act does not receive the vote necessary for immediate effect, the changes to or additions of the following laws made by this Act take effect September 1, 2007: (1) Articles 103.002, 103.0021, and 103.0031, Code of Criminal Procedure; (2) Sections 63.202 and 63.302, Education Code; (3) Sections 25.0015, 25.00211, 26.007, 403.071, 404.024, 659.007, 660.024, 660.027, and 660.028, Government Code; (4) Section 117.002, Local Government Code; and (5) Sections 74.101, 74.202, 74.301, 74.401, and 74.601, Property Code. (d) If this Act does not receive the vote necessary for

immediate effect, all provisions of this Act not provided for in Subsection (b) or (e) take effect September 1, 2007. (e) The changes to or repeal of the following laws made by this Act take effect September 1, 2007: (1) Sections 43.001, 43.002, and 43.020, Education Code; and (2) Sections 74.061, 403.016, 659.255, 659.256, and 659.257, Government Code. <<Footnote 1>> 2212.001 2212.002 2212.003 2212.004 2212.005

2007 TX S.B. 1848 (NS)

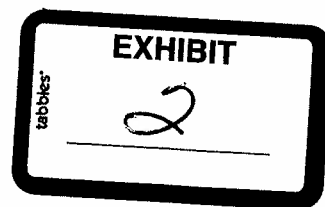
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2007 TX H.B. 3767 (NS)  
2007 Texas House Bill No. 3767, Texas Eightieth Legislature (FULL TEXT -  
NETSCAN)

Page 1



TEXAS BILL TEXT

VERSION: Introduced

March 09, 2007  
Keffer, Jim

80R5345 MTB-F  
By: Keffer H.B. No. 3767

A BILL TO BE ENTITLED

AN ACT relating to state fiscal matters.

TEXT:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 103.002, Code of Criminal Procedure, is amended to read as follows:

Art. 103.002. CERTAIN COSTS BARRED. (a) An officer may not impose a cost for a service not performed or for a service for which a cost is not expressly provided by law. (b) If a person has paid a cost for a service that is not expressly provided by law, the money paid for the cost must first be applied to any unpaid statutory court costs that the person owes, then to other unpaid costs, fees, and fines imposed in the person's case that the person owes. Any remaining money must be refunded to the person making the payment. If the money cannot be refunded to the person making the payment, it must be remitted to the comptroller in accordance with Chapter 133, Local Government Code, for deposit in the general revenue fund. SECTION 2. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0021 to read as follows: Art. 103.0021. ALLOCATION OF PARTIAL PAYMENTS. If the payment tendered by a person for court costs, fees, and fines in the person's criminal case is not adequate to cover the total amount of all obligations due, the payment shall be allocated to state court costs first and the remainder applied to other costs, fees, and fines due in the case.

SECTION 3. Article 103.0031(e), Code of Criminal Procedure, is amended to read as follows:

(e) If a county or municipality has entered into a contract under Subsection (a) and a person pays an amount that is less than the aggregate total to be collected under Subsections (a) and (b), [the allocation to the comptroller, the county or municipality, and] the private attorney or vendor shall receive 30 percent of the aggregate amount collected, not to exceed the amount added as the collection fee,

and the remainder of the amount collected shall be allocated in accordance with Article 103.0021 [be reduced proportionately].

SECTION 4. Section 43.001(b), Education Code, as amended by Chapters 201 and 328, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of: (1) the distributions to the fund from the permanent school fund as provided by Section 5(a), Article VII, Texas Constitution; (2) [one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection; [(3)] one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and (3) [(4)] all other appropriations to the available school fund made by the legislature for public school purposes.

SECTION 5. Section 43.002(a), Education Code, is amended to read as follows:

(a) On the first working day of each month in a state fiscal year, the agency [comptroller] shall transfer from the permanent school fund to the available school fund an amount equal to one-twelfth of the annual distribution from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, for the fiscal year.

SECTION 6. Section 57.48(k)(1), Education Code, is amended to read as follows:

(1) 'Compensation' means base salary or wages, longevity pay, hazardous duty pay, benefit replacement pay, a retirement annuity, or an emolument provided in lieu of base salary or wages.

SECTION 7. Section 63.202, Education Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c) [and] (d), and (h), money in the fund established under this subchapter may not be used for any purpose. (h)Expenses of managing and administering the assets of the fund shall be paid from the fund.

SECTION 8. Section 63.302, Education Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c) [and] (e), and (h), money in the fund established under this subchapter may not be used for any purpose. (h)Expenses of managing and administering the assets of the fund shall be paid from the fund.

SECTION 9. Sections 231.007(c) and (d), Family Code, are amended to read as follows:

(c) The Title IV-D agency is the sole assignee of [all] payments, including payments of compensation, by the state to a person indebted to the state under Subsection (a) if the comptroller is not responsible for issuing warrants or

**initiating electronic funds transfers to make those payments.** (d) On request of the Title IV-D agency, [:(1) the comptroller shall make payable and deliver to the agency any payments for which the agency is the assignee under Subsection (c), if the comptroller is responsible for issuing warrants or initiating electronic funds transfers to make those payments; and (2)] a state agency shall make payable and deliver to the Title IV-D agency any payments for which the Title IV-D agency is the assignee under Subsection (c) [if the comptroller is not responsible for issuing warrants or initiating electronic funds transfers to make those payments].

SECTION 10. Sections 25.0015(b) and (c), Government Code, are amended to read as follows:

(b) For a county that participates under Section 51.702(f) under a resolution adopted and filed with the comptroller before September 1, 2003, the amount shall be paid to the county's salary fund in equal **quarterly** [monthly] installments, and of each \$35,000 paid a county, \$30,000 shall be paid from funds appropriated from the judicial fund, and \$5,000 shall be paid from funds appropriated from the general revenue fund. (c) For a county that participates under Section 51.702(f) under a resolution adopted or filed with the comptroller on or after September 1, 2003, the amount shall be paid to the county's salary fund in equal **quarterly** [monthly] installments from funds appropriated from the judicial fund.

SECTION 11. Section 25.00211(b), Government Code, is amended to read as follows:

(b) The amount shall be paid to the county treasury for deposit in the contributions fund created under Section 25.00213 in equal **quarterly** [monthly] installments from funds appropriated from the judicial fund.

SECTION 12. Section 26.007(b), Government Code, is amended to read as follows:

(b) The amount shall be paid to the county's salary fund in equal **quarterly** [monthly] installments from funds appropriated from the judicial fund.

SECTION 13. Section 74.061(d), Government Code, is amended to read as follows:

(d) For services actually performed while assigned under this chapter, a [retired or] former judge or justice shall receive from county funds and money appropriated by the legislature the same amount of salary, compensation, and expenses that the regular judge is entitled to receive from the county and from the state for those services. The presiding judge of the administrative region shall certify to the county and the state the services rendered under this chapter by a [retired or] former judge or justice and the share to be paid by the state. The amount certified by the presiding judge as the state's share shall be paid from an item in the **Judiciary Section, Comptroller's** [Judicial Section--Comptroller's] Department of the General Appropriations Act for the payment of salaries of district and criminal district judges.

SECTION 14. Section 403.016(b), Government Code, is amended to read as follows:

(b) The comptroller shall use the electronic funds transfer system to pay an

employee's net state salary and travel expense reimbursements unless: (1) the employee does not hold a classified position under the state's position classification plan and the employee's [gross state] salary is less than the minimum [gross state] salary of [for a position classified to] group 8[,step 1,] of Salary Schedule A of the General Appropriations Act [state position classification plan]; or (2) the employee holds a classified position under the state's position classification plan and the position is allocated to a group with a minimum salary of less than the minimum salary of [that is classified below] group 8 of Salary Schedule A of the General Appropriations Act.

SECTION 15. Section 403.055(1)(1), Government Code, is amended to read as follows:

(1) 'Compensation' means base salary or wages, longevity pay, hazardous duty pay, benefit replacement pay, a retirement annuity, or an emolument provided in lieu of base salary or wages.

SECTION 16. Section 403.0551(d), Government Code, is amended to read as follows:

(d) This section does not authorize the comptroller to deduct the amount of a state employee's indebtedness to a state agency from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. In this subsection: [,] (1) 'compensation[,]' has the meaning assigned by Section 403.055; and (2) 'indebtedness,' 'state agency,' 'state employee,' and 'successor' have the meanings assigned by Section 666.001.

SECTION 17. Sections 403.071(g) and (h), Government Code, are amended to read as follows:

(g) Notwithstanding Subsection (a), the comptroller [and a state agency] may [contract in writing for the comptroller to] audit claims presented by [the] state agency after the comptroller prepares warrants or uses the electronic funds transfer system to pay the claims. The [If the comptroller and a state agency execute a contract, the] comptroller may determine [decide] the types of claims that will be audited after payment. (h) [This subsection applies if the comptroller and a state agency have contracted in accordance with Subsection (g).] The comptroller shall audit claims after payment under Subsection (g) in the same manner [way] that the comptroller audits claims before payment under Subsection (a). The comptroller may establish requirements and adopt rules concerning the time that a state agency must retain documentation in its files to enable a postpayment audit. If a postpayment audit by the comptroller shows that a claim presented by a state agency was invalid, the comptroller may: (1) implement procedures to ensure that similar invalid claims from the state agency are not paid in the future; (2) report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the Legislative Budget Board the results of the audit; (3) require the state agency to obtain a refund of the monies from the payee; and (4) [cancel the contract with the state agency; and [(5)] reduce the state agency's remaining appropriations by the amount of the claim.

SECTION 18. Section 404.024, Government Code, is amended by amending Subsections (b) and (1) and adding Subsections (m) and (n) to read as follows:

(b) State funds not deposited in state depositories shall be invested by the comptroller in: (1) direct security repurchase agreements; (2) reverse security repurchase agreements; (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; (4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government; (5) bankers' acceptances that: (A) are eligible for purchase by the Federal Reserve System; (B) do not exceed 270 days to maturity; and (C) are issued by a bank whose other comparable short-term obligations are rated in [that has received] the highest short-term [credit] rating category, within which there may be subcategories or gradations indicating relative standing, including such subcategories or gradations as 'rating category' or 'rated,' by a nationally recognized statistical rating organization, as defined by Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 by the Securities and Exchange Commission [investment rating firm]; (6) commercial paper that: (A) does not exceed 270 days to maturity; and (B) except as provided by Subsection (i), is issued by an entity whose other comparable short-term obligations are rated in [has received] the highest short-term [credit] rating category by a nationally recognized statistical rating organization [investment rating firm]; (7) contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading; (8) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest long-term [credit] rating categories for debt obligations by a nationally recognized statistical rating organization [investment rating firm]; (9) bonds issued, assumed, or guaranteed by the State of Israel; (10) obligations of a state or an agency, county, city, or other political subdivision of a state; (11) mutual funds secured by obligations that are described by Subdivisions (1) through (6) or by obligations consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated by the Securities and Exchange Commission, including pooled funds: (A) established by the Texas Treasury Safekeeping Trust Company; (B) operated like a mutual fund; and (C) with portfolios consisting only of dollar-denominated securities; [and] (12) foreign currency for the sole purpose of facilitating investment by state agencies that have the authority to invest in foreign securities; (13) asset-backed securities, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), that are rated at least A or its equivalent by a nationally recognized statistical rating organization and that have a weighted-average maturity of five years or less; and (14) corporate debt obligations that are rated at least A or its equivalent by a nationally recognized statistical rating organization and mature in five years or less from the date on which the obligations were 'acquired,' as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7). (1) The comptroller may lend securities under procedures established by the comptroller. The procedures must be consistent with industry practice and must include a requirement to fully secure the loan with cash, obligations described by Subsections (b) (1)-(6), or a combination of cash and the described obligations. Notwithstanding any law to the contrary, cash may be reinvested in the items permitted under Subsection (b) or mutual funds, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7) [In this subsection, 'obligation' means an item described by Subsections (b) (1)-(6)]. (m) In entering into a direct security repurchase agreement or a

reverse security repurchase agreement, the comptroller may agree to accept cash on an overnight basis in lieu of the securities, obligations, or participation certificates identified in Section 404.001(3). Cash held by the state under this subsection is not a deposit of state or public funds for purposes of any statute, including this subchapter or Subchapter D, that requires a deposit of state or public funds to be collateralized by eligible securities. (n) Notwithstanding any other law to the contrary, any government investment pool created to function as a money market mutual fund and managed by the comptroller or the Texas Treasury Safekeeping Trust Company may invest the funds it receives in investments that are 'eligible securities,' as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), if it maintains a dollar-weighted average portfolio maturity of 90 days or less, with the maturity of each portfolio security calculated in accordance with Rule 2a-7 (17 C.F.R. Section 270.2a-7), and meets the diversification requirements of Rule 2a-7.

SECTION 19. The heading to Section 552.024, Government Code, is amended to read as follows:

Sec. 552.024. ELECTING TO DISCLOSE ADDRESS, [AND] TELEPHONE NUMBER, DATE OF BIRTH, SOCIAL SECURITY NUMBER, AND PERSONAL FAMILY INFORMATION.

SECTION 20. Section 552.024(a), Government Code, is amended to read as follows:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, date of birth, or social security number, or that reveals whether the person has family members.

SECTION 21. The heading to Section 552.117, Government Code, is amended to read as follows:

Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, DATES OF BIRTH, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

SECTION 22. Section 552.117(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, date of birth, or social security number of the following person or that reveals whether the person has family members: (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; (3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175; (4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal

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institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175; or (5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable.

SECTION 23. The heading to Section 552.1175, Government Code, is amended to read as follows:

Sec. 552.1175. CONFIDENTIALITY OF ADDRESSES, TELEPHONE NUMBERS, **DATES OF BIRTH**, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR A PROSECUTOR'S OFFICE.

SECTION 24. Section 552.1175(b), Government Code, is amended to read as follows:

(b) Information that relates to the home address, home telephone number, **date of birth**, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates: (1) chooses to restrict public access to the information; and (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

SECTION 25. Section 552.132(b), Government Code, is amended to read as follows:

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to: (1) the name, social security number, **date of birth**, address, or telephone number of the crime victim; or (2) any other information the disclosure of which would identify or tend to identify the crime victim.

SECTION 26. Section 552.1325(b), Government Code, is amended to read as follows:

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential: (1) the name, social security number, **date of birth**, address, and telephone number of a crime victim; and (2) any other information the disclosure of which would identify or tend to identify the crime victim.

SECTION 27. Section 552.138(b), Government Code, is amended to read as follows:

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to: (1) the home address, home telephone number, **date of birth**, or social security number of an employee or a volunteer worker of a family violence shelter center or a sexual assault program, regardless of whether the employee or worker complies with Section 552.024; (2) the location or physical layout of a family violence shelter center; (3) the name, home address, home telephone number, **date of birth, or social security number** or **other** numeric identifier of a current

or former client of a family violence shelter center or sexual assault program; (4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program; (5) the name, home address, [or] home telephone number, date of birth, or social security number or other numeric identifier of a private donor to a family violence shelter center or sexual assault program; or (6) the home address, [or] home telephone number, date of birth, or social security number of a member of the board of directors or the board of trustees of a family violence shelter center or sexual assault program, regardless of whether the board member complies with Section 552.024. SECTION 28. Subchapter A, Chapter 659, Government Code, is amended by adding Section 659.007 to read as follows: **Sec. 659.007. EARNINGS STATEMENTS. (a) In this section, 'state agency' has the meaning assigned by Section 403.013. (b) A state agency may provide a written or electronic earnings statement to an officer or employee of the agency. (c) The comptroller may adopt rules and establish procedures concerning the earnings statements provided by state agencies that under Subchapter C, Chapter 2101, are required to use the uniform statewide payroll system.**

SECTION 29. Section 659.044(e), Government Code, is amended to read as follows:

(e) This subsection applies only to an employee of the Texas Youth Commission who is receiving less than the maximum amount of hazardous duty pay that the commission may pay to the employee under Section 659.303. The employee's monthly amount of longevity pay is the sum of: (1) \$20 [\$4] for every two years [each year] of lifetime service credit, which may not include any period served in a hazardous duty position; and (2) the lesser of: (A) \$20 [\$4] for every 24 months of lifetime service credit accrued under Section 659.307(a) [each year served in a hazardous duty position]; or (B) the difference between: (i) \$10 [\$7] for each 12-month period of lifetime service credit accrued under Section 659.307(a) [year served in a hazardous duty position]; and (ii) the amount paid by the commission for each 12-month period of lifetime service credit accrued under Section 659.307(a) [year served in a hazardous duty position].

SECTION 30. (a) Section 659.046, Government Code, is amended by adding Subsection (g) to read as follows:

**(g) For purposes of Subsection (a) (4), an employee's service as an academic employee of a state institution of higher education includes a summer semester or session during which the employee is not required to provide services to the institution if: (1) the employee provided services to the institution throughout the immediately preceding spring and fall semesters; and (2) the employee resumes providing services to the institution at the beginning of the first fall semester occurring after the summer semester or session.** (b) The changes in law made by Subsection (a) of this section to Section 659.046, Government Code, apply beginning with the first summer semester or session that occurs during calendar year 2007.

SECTION 31. Section 659.255(a)(3), Government Code, is amended to read as follows:

(3) 'Merit salary increase' means an increase in compensation to: (A) a higher step rate in the same classified salary group, if the classified employee is compensated under a salary group that is divided into steps [Salary Schedule A of the General



Appropriations Act]; or (B) a higher rate within the range of the same classified salary group, if the classified employee is compensated under **a salary group that is not divided into steps** [Salary Schedule B of the General Appropriations Act].

SECTION 32. Sections 659.256(c) and (f), Government Code, are amended to read as follows:

(c) When an employee is promoted **within** [to a position in a higher salary group in] Salary Schedule A of the General Appropriations Act **or from Salary Schedule B or C of the General Appropriations Act to Salary Schedule A of the General Appropriations Act**, the employee shall receive a salary rate **that is** at least **3.4 percent** [one step] higher than the employee's salary rate before promotion or the minimum rate of the new salary range, whichever is higher, and may, at the discretion of the state agency administrator, receive an annual salary rate up to and including the maximum rate of the new salary range. [When an employee is promoted from a position in Salary Schedule B or C of the General Appropriations Act to a position in Salary Schedule A of the General Appropriations Act, the employee shall receive a step rate that is at least one step above the rate the employee received before promotion or the minimum rate of the new salary range, whichever is higher, and may, at the discretion of the state agency administrator, receive an annual rate up to and including the maximum rate of the new salary range.] (f) Notwithstanding the other provisions of this section, an employee whose salary prior to promotion exceeds the maximum rate of the employee's assigned salary group may not receive more than the maximum rate of the new salary group, even if the increase is less than one step in **a salary group that is divided into steps** [Salary Schedule A of the General Appropriations Act] or 3.4 percent in **a salary group that is not divided into steps** [Salary Schedule B of the General Appropriations Act].

SECTION 33. Section 659.257(c), Government Code, is amended to read as follows:

(c) When an employee is demoted **within** [to a position in a lower salary group in] Salary Schedule A of the General Appropriations Act **or from Salary Schedule B or C of the General Appropriations Act to Salary Schedule A of the General Appropriations Act**, the employee will receive a salary rate **of** at least **3.4 percent** [one step] below the rate the employee received before demotion. [When an employee is demoted from a position in Salary Schedule B or C of the General Appropriations Act to a position in Salary Schedule A of the General Appropriations Act, the employee shall receive a step rate that is at least 3.4 percent below the rate the employee received before demotion.]

SECTION 34. Section 660.024(a), Government Code, is amended to read as follows:

(a) The chief administrator of a state agency must give advance written approval for any travel related to official state business for which a reimbursement for travel expenses is claimed or for which an advance for travel expenses to be incurred is sought. **The advance written approval may be communicated electronically.** [A copy of the written approval shall be submitted with the travel voucher to the comptroller in accordance with Section 660.027.]

SECTION 35. Sections 660.027(b), (d), and (e), Government Code, are amended to read

as follows:

(b) A voucher submitted under Subsection (a) is valid only if: (1) the state agency submitting the voucher approves it in accordance with Chapter 2103 and, if required by law, certifies the voucher; and (2) the state employee who incurred the travel expense or, if the employee is unavailable, another individual acceptable to the comptroller approves the **description, information, and documentation required by Subsection (d) [voucher]** in writing or electronically, **except that the employee's approval is not required if another person is required by law to provide the approval.** (d) A voucher must **be supported by: (1) a description of [describe] the official state business performed; and (2) [be accompanied by] the information and documentation that the comptroller considers** necessary for the comptroller to determine compliance with this chapter, the travel provisions of the General Appropriations Act, and the rules adopted by the comptroller under this chapter. (e) The comptroller may require a state agency to provide to **the comptroller the description, information, and documentation required under [by] Subsection (d): (1) on the form adopted by the comptroller under Subsection (c); (2) electronically; (3) by submitting receipts or other documents; or (4) [(3)] by any [a] combination of Subdivisions (1) [and] (2), and (3).**

SECTION 36. Section 660.028, Government Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (e) to read as follows:

(b) If the comptroller audits a state agency's voucher after the comptroller issues a warrant or initiates an electronic funds transfer in response to the voucher, the comptroller may require the agency to maintain in its files the **description, information, and documentation [receipts]** relating to the **travel expense paid or reimbursed by the voucher** until the comptroller audits the voucher. (c) If a state agency pays or reimburses a travel expense without first submitting a voucher to the comptroller, the comptroller may audit the payment or reimbursement for compliance with this chapter and the travel provisions of the General Appropriations Act. The comptroller may report the results of the audit to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the Legislative Budget Board. The state agency shall cooperate with the comptroller and make available the **description, information, and documentation [receipts]** required by the comptroller at the time and in the manner required by the comptroller. (d) The comptroller may require a state agency to maintain in its files the **description, information, and documentation [receipts]** regarding a travel expense payment or reimbursement for the period required by the comptroller. **(e) The comptroller may require or authorize the description, information, and documentation relating to a travel expense payment or reimbursement to be maintained in paper form or electronically.** SECTION 37. The heading to Subchapter C, Chapter 661, Government Code, is amended to read as follows:

SUBCHAPTER C. PAYMENT FOR VACATION **LEAVE** [TIME]

TO

STATE EMPLOYEES WHO SEPARATE FROM STATE EMPLOYMENT

SECTION 38. Section 661.062, Government Code, is amended to read as follows:

Sec. 661.062. ENTITLEMENT TO PAYMENT FOR VACATION **LEAVE** [TIME]. (a) A state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment [and who resigns, is dismissed, or otherwise separates from state employment by a state agency other than an institution of higher education] is entitled to be paid for [the accrued balance of] the employee's accrued vacation leave [time as of the date of the separation,] if: (1) the employee resigns or is dismissed from a position in a state agency that is not an institution of higher education without, during the 30-day period immediately following the effective date of the resignation or dismissal: (A) accepting a position at another state agency; and (B) resuming state employment in a position that accrues vacation leave; (2) the employee resigns or is dismissed from a position in a state agency that is an institution of higher education without: (A) having accepted a position at another state agency; and (B) resuming state employment in a position that accrues vacation leave on the first workday immediately following the effective date of the resignation or dismissal; (3) the employee moves from a position in a state agency that accrues vacation leave to another position within the same state agency that does not accrue vacation leave and the agency agrees to pay the employee for the accrued leave; (4) the employee moves from a position in a state agency that accrues vacation leave to a position in a different state agency that does not accrue vacation leave and the second agency refuses to credit the employee for the accrued leave; (5) the employee moves from a position in a state agency that is not an institution of higher education to a position in a different state agency that accrues vacation leave and the first day of employment in the second position is at least 31 days after the last day of employment in the first position; (6) the employee moves from a position in an institution of higher education to a position in a different state agency that accrues vacation leave and the first day of employment in the second position is at least two workdays after the last day of employment in the first position; or (7) the employee holds two or more positions in a state agency, the employee resigns or is dismissed from a position that accrues vacation leave, and the agency agrees to pay the employee for the accrued leave. [the individual is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period immediately following the date of separation from state employment. A state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who resigns, is dismissed, or otherwise separates from state employment by an institution of higher education is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation.] (b) For purposes of this section, the amount of a state employee's accrued vacation leave is the amount existing on the date the event occurs that entitles the employee to be paid for the employee's accrued vacation leave. [A separation from state employment includes a separation in which the employee: [(1) leaves one state agency to begin working for another state agency, if one or more workdays occur between the two employments and the individual is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period immediately following the date of separation from state employment; [(2) moves from a position in a state agency that accrues vacation time to a position in that agency that does not accrue vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time; [(3) moves from a position in a state agency that accrues vacation time to a position in another state agency that does not accrue vacation

time, if the other state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; [(4) moves from a position in a state agency that does not accrue vacation time to a position in another state agency that does not accrue vacation time, if the other state agency is not authorized or refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; or [(5) holds two or more positions, and separates from one that accrues vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time.] (c) **The state agency to which a state employee moves shall credit the employee for the employee's accrued vacation leave if the employee is not entitled under Subsection (a) (3) or (4) to receive payment for that leave.** (d) **A state employee who holds two or more positions is entitled to be paid for the employee's accrued vacation leave concerning a particular [separation under Subsection (b)(4) applies only with respect to the] position only if the event entitling the employee to receive the payment relates to the position that accrues vacation leave, as provided in Subsection (a) [from which the separation occurs].** (e) [(d)] State employment is continuous for purposes of **this section** [Subsection (a)] while the employee is entitled to be paid a regular state salary, except that continuity of state employment is not interrupted while the employee is on a leave of absence without pay for less than one calendar month. (f) [(e)] The following are **ineligible** [not entitled] to **receive a payment** [payments] under this subchapter: (1) an individual who holds an office that is normally filled by vote of the people; (2) an independent contractor or an employee of an independent contractor; (3) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team; (4) an individual employed on a piecework basis; or (5) an individual covered by: (A) the Judicial Retirement System of Texas Plan One; (B) the Judicial Retirement System of Texas Plan Two; or (C) the Teacher Retirement System of Texas, other than an individual described by Section 661.061(2)(E) or (F). (g) **An employee of a legislative agency is eligible or entitled to receive payment for the employee's accrued [(f) Payment for accrued] vacation leave only as provided by the administrative head of that agency. An employee of the house of representatives or of a member of the house of representatives is eligible or entitled to receive payment for the employee's accrued vacation leave only as provided by the speaker of the house of representatives. An employee of the senate, of a member of the senate, or of the lieutenant governor is eligible or entitled to receive payment for the employee's accrued vacation leave only as provided by the lieutenant governor** [for employees of the legislative branch, including employees of the lieutenant governor, is determined as follows: [(1) for employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and [(2) for employees of a legislative agency, by the administrative head of the agency].

SECTION 39. Sections 661.063(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the payment to a state employee under this subchapter shall be computed by multiplying the employee's rate of compensation on the date **the event occurs that entitles the employee to be paid for the employee's accrued vacation leave** [of separation from state employment] by the total number of hours of vacation **leave** [time] determined under Section 661.064. (b) The payment under this subchapter to a state employee who **resigns, is**

**dismissed, or moves to another position from** [separates from state employment while holding] a position that does not accrue vacation **leave** [time] shall be computed according to this subsection. The employee's final rate of compensation in the last position held that accrues vacation **leave** [time] shall be multiplied by the employee's total number of hours of vacation **leave** [time] determined under Section 661.064.

SECTION 40. Section 661.064, Government Code, is amended to read as follows:

Sec. 661.064. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME. (a) This subsection applies except as provided by Subsection (c). For a state employee who, on the date **the event occurs that entitles the employee to be paid for the employee's accrued vacation leave**, [of separation] is normally scheduled to work at least 40 hours a week, eight hours are to be added to the employee's accrued vacation **leave** [time] for each state or national holiday that is scheduled to fall within the period after the date of **the event** [separation] and during which the employee could have used the **leave** [time]. To determine the period during which vacation **leave** [time] could have been used and the number of state or national holidays, the employee's vacation **leave** [time] is allocated over the workdays after the **date of the event** [employee's separation] and eight hours are added as a state or national holiday occurs during the period. (b) For a state employee who, on the date **the event occurs that entitles the employee to be paid for the employee's accrued vacation leave**, [of separation] is normally scheduled to work less than 40 hours a week, the number of hours that is to be added to the employee's accrued vacation **leave** [time] for each state or national holiday is computed as provided by Subsection (a), but is to be proportionally reduced according to the lesser number of the employee's normally scheduled weekly work hours. (c) For a state employee who is paid under this subchapter because the **event that entitles the employee to be paid for the employee's accrued vacation leave** [separation from state employment] involves a move to a position in a state agency that does not accrue vacation **leave** [time], no hours may be added to the employee's accrued vacation **leave** [time] for a state or national holiday **that** [which] is scheduled to fall within the period after the date of **the event** [separation] and during which the employee could have used the **leave** [time].

SECTION 41. Section 661.066, Government Code, is amended to read as follows:

Sec. 661.066. PAYMENT CHARGED TO CERTAIN FISCAL YEAR. A state agency shall charge a lump-sum payment required by this subchapter to the fiscal year in which the **event occurs that entitles the employee to be paid for the employee's accrued vacation leave** [state employee's separation from state employment becomes effective].

SECTION 42. Section 661.067, Government Code, is amended to read as follows:

Sec. 661.067. AGREEMENT FOR STATE EMPLOYEE TO REMAIN ON AGENCY PAYROLL. (a) A state agency may agree to permit an employee entitled to payment under this subchapter to remain on the agency's payroll to exhaust the employee's accrued vacation **leave** [time]. (b) A state employee who remains on the payroll of a state agency under this section: (1) is entitled to continue to receive all compensation and benefits that the state employee was receiving on the employee's last day of duty, including paid holidays, longevity pay, and hazardous duty pay; (2) is entitled to a general

salary increase for state employees that takes effect before the employee's accrued vacation **leave** [time] is exhausted; and (3) may not use sick leave or accrue sick leave or vacation **leave** [time]. SECTION 43. The heading to Subchapter D, Chapter 661, Government Code, is amended to read as follows:

SUBCHAPTER D. PAYMENTS FOR VACATION **LEAVE** [TIME]

TO CONTRIBUTING MEMBERS OF EMPLOYEES RETIREMENT SYSTEM WHO

RETIRE

SECTION 44. Section 661.091, Government Code, is amended to read as follows:

Sec. 661.091. PAYMENT FOR VACATION **LEAVE** [TIME] ON RETIREMENT. (a) A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for the member's accrued vacation **leave** [time] as of the date of retirement. (b) A payment required by this section is payable on the date of retirement.

SECTION 45. Section 661.092, Government Code, is amended to read as follows:

Sec. 661.092. COMPUTATION OF PAYMENT. A payment required by this subchapter shall be computed **as provided by Section 661.063** [as if the member had taken vacation time, using the member's rate of compensation as of the date of retirement].

SECTION 46. Section 662.010, Government Code, is amended to read as follows:

Sec. 662.010. HOLIDAY BEFORE WORK BEGINS OR AFTER WORK ENDS. (a) An individual **who is** [must be] a state employee on the **first** workday [before and] after a state or national holiday **may not** [in order to] be paid for that holiday **if: (1) the individual is not a state employee on the last workday before the holiday; and (2) [ , unless] the holiday and the [falls on the employee's] first [or last] workday after the holiday occur during different months [of the month]. (b) An individual who is a state employee on the last workday before a state or national holiday may not be paid for that holiday if: (1) the individual is not a state employee on the first workday after the holiday; and (2) the holiday and the last workday before the holiday occur during different months. (c) [(b)]** In this section, 'state employee': (1) includes an individual who uses paid leave from a state agency; and (2) does not include an individual who uses unpaid leave from a state agency.

SECTION 47. Subchapter A, Chapter 2103, Government Code, is amended by adding Section 2103.005 to read as follows: **Sec 2103.005. CONFLICTS OF LAW. This chapter prevails over all other law to the extent of any conflict.**

SECTION 48. Chapter 2107, Government Code, is amended by adding Section 2107.009 to read as follows:

**Sec 2107.009. DEDUCTIONS FOR REPAYMENT OF CERTAIN DEBTS OR TAX DELINQUENCIES. (a) Except as provided by this section, a state agency may deduct the amount of a person's indebtedness to the state or tax delinquency from any amount the agency owes the person or the person's successor. The state agency shall pay to the person or successor any amount remaining after the deduction. (b) Subsection (a) applies to a person or the person's successor only if: (1) the state agency has provided notice to the person or successor that complies with Subsection**

(c); (2) Section 57.48, Education Code, or Section 403.055 of this code prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to the person or successor; and (3) the comptroller is not responsible under Section 404.046, 404.069, or 2103.003 for paying the amount owed by the state agency to the person or successor through the issuance of a warrant or initiation of an electronic funds transfer. (c) A state agency shall provide notice to a person or the person's successor before deducting the amount of the person's indebtedness to the state or tax delinquency under Subsection (a). The notice must: (1) be given in a manner reasonably calculated to give actual notice to the person or successor; (2) state the: (A) amount of the indebtedness or the amount of the tax, penalties, interest, and costs due, as applicable; and (B) name of the indebted or delinquent person; (3) specify the deadline for paying the amount due; and (4) inform the person or successor that unless the amount due is paid before the deadline, the state agency will deduct the amount of the indebtedness or delinquency from the amount the agency owes the person or successor. (d) This section does not authorize a state agency to deduct the amount of a state employee's indebtedness to the state from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. In this subsection: (1) 'compensation' has the meaning assigned by Section 403.055; and (2) 'indebtedness,' 'state agency,' 'state employee,' and 'successor' have the meanings assigned by Section 666.001. (e) A state agency shall credit the appropriate fund or account for any amount deducted under this section if the agency is the custodian or trustee of that fund or account. The agency shall remit any amount deducted under this section to the custodian or trustee of the appropriate fund or account if the agency is not its custodian or trustee. (f) The comptroller may determine the order that a person's multiple types of indebtedness to the state or tax delinquencies are deducted from the amount a state agency owes the person or the person's successor. (g) The assignee of a person or the person's successor is considered to be a successor of the person for the purposes of this section, except that a deduction under this section from the amount owed to the assignee of a person or the person's successor may not be made if the assignment became effective before the person became indebted to the state or incurred the tax delinquency. (h) Except as provided by this section, a state agency may adopt rules and establish procedures concerning deductions made by the agency under this section. To the extent of any conflict, rules adopted or procedures established by the comptroller under Subsection (i) prevail over the agency's rules or procedures. (i) The comptroller may adopt rules and establish procedures to administer Subsection (f). (j) Except as provided by Subsection (d), in this section 'successor' means a person's estate and the distributees of that estate.

SECTION 49. Section 2115.001(1), Government Code, is amended to read as follows:

(1) 'Overpayment' includes a duplicate payment made to a vendor for a single invoice and a payment made to a vendor: (A) when an available discount from the vendor was not applied; (B) for a late payment penalty that was improperly applied by the vendor; (C) for shipping costs that were computed incorrectly or incorrectly included in an invoice; (D) for a [state sales] tax or fee that the state is not required to pay under applicable law, except that the term does not include a tax or fee imposed under a law of this state; or (E) for a good or service the vendor did not provide.

SECTION 50. The heading to Section 2115.003, Government Code, is amended to read as follows:

Sec. 2115.003. **SCOPE OF** [STATE AGENCIES SUBJECT TO] MANDATORY RECOVERY AUDITS.

SECTION 51. Section 2115.003(b), Government Code, is amended to read as follows:

(b) The comptroller may exempt from the mandatory recovery audit process a state agency **or a type of payment: (1) if the comptroller determines, in accordance with** [that has a low proportion of its expenditures made to vendors, according to] criteria the comptroller adopts by rule, **that the exemption would be in the best interests of the state; or (2) by rule** [after consideration of the likely costs and benefits of performing recovery audits for agencies that make relatively few or small payments to vendors].

SECTION 52. Section 2115.004(a), Government Code, is amended to read as follows:

(a) A state agency shall pay[, from recovered money appropriated for the purpose,] the recovery audit consultant responsible for obtaining for the agency a reimbursement from a vendor. **Unless otherwise prohibited by law, the payment must be made from recovered money.**

SECTION 53. Section 117.002, Local Government Code, is amended to read as follows:

Sec. 117.002. TRANSFER OF UNCLAIMED FUNDS TO COMPTROLLER. Any funds deposited under this chapter[, except cash bail bonds,] that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be reported and delivered by the county or district clerk to the comptroller without further action by any court. The dormancy period for funds deposited under this chapter begins on the later of: (1) the date of entry of final judgment or order of dismissal in the action in which the funds were deposited; (2) the 18th birthday of the minor for whom the funds were deposited; or (3) a reasonable date established by rule by the comptroller to promote the public interest in disposing of unclaimed funds.

SECTION 54. Section 74.202, Property Code, is amended to read as follows:

Sec. 74.202. NOTICE FOR ITEM WITH VALUE OF LESS THAN **\$200** [\$100]. In the notice required by Section 74.201, the comptroller is not required to publish information regarding an item having a value that is less than **\$200** [\$100] unless the comptroller determines that publication of that information is in the public interest.

SECTION 55. Section 74.101(a), Property Code, is amended to read as follows:

(a) Each holder who on June 30 holds property that is presumed abandoned under Chapter 72, 73, or 75 of this code or under Chapter 154, Finance Code, shall file a report of that property on or before the following November 1. The comptroller may require the report to be in a particular format, including **an electronic [a] format that can be read by a computer. The comptroller may adopt rules to establish threshold requirements for electronic filing by holders.**



SECTION 56. Section 74.301, Property Code, is amended by adding Subsection (d) to read as follows:

**(d) The comptroller may require holders to electronically transmit money subject to delivery under Subsection (a). The comptroller may adopt rules to establish the threshold requirement for electronic transmission of money by holders.**

SECTION 57. Section 74.401(a), Property Code, is amended to read as follows:

(a) Except as provided by Subsection (c) or Section 74.404, the comptroller shall sell at public sale all personal property, other than money and [marketable] securities, delivered to the comptroller in accordance with Section 74.301. The comptroller shall conduct the sale in the city in this state that the comptroller determines affords the most favorable market for the particular property.

SECTION 58. Section 74.601, Property Code, is amended by adding Subsection (g) to read as follows:

**(g) If an owner does not assert a claim for unclaimed money and the owner is reported to be the state or a state agency, the comptroller may deposit the unclaimed money to the credit of the general revenue fund. The comptroller may establish procedures and adopt rules as necessary to implement this section.**

SECTION 59. The following laws are repealed: (1) Section 43.020, Education Code; (2) Section 661.093, Government Code; (3) Chapter 2112 [FN1], Government Code; and (4) Section 2103.063, Government Code. SECTION 60. (a) The changes in law made by this Act to Sections 552.024, 552.117, 552.1175, 552.132, 552.1325, and 552.138, Government Code, apply to information, records, and notations collected, made, assembled, or maintained on, before, or after the effective date of this Act. (b) The changes in law made by this Act to Sections 552.024, 552.117, 552.1175, 552.132, 552.1325, and 552.138, Government Code, apply to a request for information that is received by a governmental body on, before, or after the effective date of this Act. (c) In this section, 'governmental body' has the meaning assigned by Section 552.003, Government Code. SECTION 61. A rule adopted by the comptroller of public accounts before the effective date of the changes made by this Act to Chapter 2115, Government Code, is not required to be readopted by the comptroller if the rule is consistent with that chapter as amended by this Act. This section applies only to a rule adopted to administer that chapter. SECTION 62. (a) Except as provided by Subsection (e) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. (b) If this Act does not receive the vote necessary for immediate effect, the changes to or additions or repeal of the following laws made by this Act take effect on the 91st day after the last day of the legislative session: (1) Section 57.48, Education Code; (2) Section 231.007, Family Code; (3) Sections 403.055, 403.0551, 552.024, 552.117, 552.1175, 552.132, 552.1325, 552.138, 659.044, 659.046, 661.062, 661.063, 661.064, 661.066, 661.067, 661.091, 661.092, 661.093, 662.010, 2103.063, 2107.009, 2115.001, 2115.003, and 2115.004, Government Code; (4) the headings for Subchapters C and D, Chapter 661, Government Code; and (5) Chapter 2112, Government Code. (c) If this Act does not receive the vote necessary for immediate effect, the changes to or additions of the following laws made by this Act take effect September 1, 2007: (1)

Articles 103.002, 103.0021, and 103.0031, Code of Criminal Procedure; (2) Sections 63.202 and 63.302, Education Code; (3) Sections 25.0015, 25.00211, 26.007, 403.071, 404.024, 659.007, 660.024, 660.027, and 660.028, Government Code; (4) Section 117.002, Local Government Code; and (5) Sections 74.101, 74.202, 74.301, 74.401, and 74.601, Property Code. (d) If this Act does not receive the vote necessary for immediate effect, all provisions of this Act not provided for in Subsection (b) or (e) take effect September 1, 2007. (e) The changes to or repeal of the following laws made by this Act take effect September 1, 2007: (1) Sections 43.001, 43.002, and 43.020, Education Code; and (2) Sections 74.061, 403.016, 659.255, 659.256, and 659.257, Government Code. <<Footnote 1>>  
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