

**CHAPTER 959**

S.B. No. 797

An Act relating to adoption of a nonsubstantive revision of the statutes relating to civil procedure and civil remedies and liabilities; making conforming amendments and repeals; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1. ADOPTION OF CODE.** The Civil Practice and Remedies Code is adopted to read as follows:

**CIVIL PRACTICE AND REMEDIES CODE**

**TITLE 1. GENERAL PROVISIONS**

Chapter 1. General Provisions  
[Chapters 2-4 reserved for expansion]

**TITLE 2. TRIAL, JUDGMENT, AND APPEAL**

**SUBTITLE A. GENERAL PROVISIONS**

Chapter 5. Rule of Decision  
Chapter 6. Governmental Exemption From Bond and Security Requirements  
Chapter 7. Liability of Court Officers  
[Chapters 8-14 reserved for expansion]

**SUBTITLE B. TRIAL MATTERS**

Chapter 15. Venue  
Chapter 16. Limitations  
Chapter 17. Parties; Citation; Long-Arm Jurisdiction  
Chapter 18. Evidence  
Chapter 19. Lost Records  
Chapter 20. Depositions  
Chapter 21. Interpreters  
Chapter 22. Witnesses  
[Chapters 23-29 reserved for expansion]

Chapter 30. Miscellaneous Provisions

**SUBTITLE C. JUDGMENTS**

Chapter 31. Judgments

Chapter 32. Contribution

Chapter 33. Comparative Negligence

Chapter 34. Execution on Judgment

Chapter 35. Enforcement of Judgments of Other States

Chapter 36. Enforcement of Judgments of Other Countries

Chapter 37. Declaratory Judgments

Chapter 38. Attorney's Fees

[Chapters 39-50 reserved for expansion]

**SUBTITLE D. APPEALS**

Chapter 51. Appeals

[Chapters 52-60 reserved for expansion]

**TITLE 3. EXTRAORDINARY REMEDIES**

Chapter 61. Attachment

Chapter 62. Sequestration

Chapter 63. Garnishment

Chapter 64. Receivership

Chapter 65. Injunction

Chapter 66. Quo Warranto

[Chapters 67-70 reserved for expansion]

**TITLE 4. LIABILITY IN TORT**

Chapter 71. Wrongful Death; Survival; Injuries Occurring Out of State

Chapter 72. Liability of Motor Vehicle Owner or Operator to Guest

Chapter 73. Libel

Chapter 74. Good Samaritan Law: Liability for Emergency Care

Chapter 75. Limitation of Landowners' Liability

Chapter 76. Food Donors

Chapter 77. Transplants and Transfusions

Chapter 78. Volunteer Fire Fighters

Chapter 79. Hazardous Materials

[Chapters 80-100 reserved for expansion]

**TITLE 5. GOVERNMENTAL LIABILITY**

Chapter 101. Tort Claims

Chapter 102. Tort Claims Payments by Local Governments

Chapter 103. Compensation to Persons Wrongfully Imprisoned

Chapter 104. State Liability for Conduct of Public Servants

Chapter 105. Frivolous Claim by State Agency

Chapter 106. Discrimination Because of Race, Religion, Color, Sex, or National Origin

[Chapters 107-120 reserved for expansion]

**TITLE 6. MISCELLANEOUS PROVISIONS**

Chapter 121. Acknowledgments and Proofs of Written Instruments

Chapter 122. Juror's Right to Reemployment

Chapter 123. Interception of Communication

Chapter 124. Privilege to Investigate Theft

Chapter 125. Common and Public Nuisances

Chapter 126. Churches

Chapter 127. Indemnity Provisions in Certain Mineral Agreements

Chapter 128. Unauthorized Use of Television Decoding and Interception Devices

Chapter 129. Age of Majority

**CIVIL PRACTICE AND REMEDIES CODE**

**TITLE 1. GENERAL PROVISIONS**

**CHAPTER 1. GENERAL PROVISIONS**

**Sec. 1.001. PURPOSE OF CODE**

## Sec. 1.002. CONSTRUCTION OF CODE

## Sec. 1.003. INTERNAL REFERENCES CIVIL PRACTICE AND REMEDIES CODE

## TITLE 1. GENERAL PROVISIONS

## CHAPTER 1. GENERAL PROVISIONS

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

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

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

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

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

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

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code. (New.)

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

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

[Chapters 2-4 reserved for expansion]

## TITLE 2. TRIAL, JUDGMENT, AND APPEAL

## SUBTITLE A. GENERAL PROVISIONS

## CHAPTER 5. RULE OF DECISION

## Sec. 5.001. RULE OF DECISION

## TITLE 2. TRIAL, JUDGMENT, AND APPEAL

## SUBTITLE A. GENERAL PROVISIONS

## CHAPTER 5. RULE OF DECISION

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

## CHAPTER 6. GOVERNMENTAL EXEMPTION FROM BOND AND SECURITY REQUIREMENTS

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

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

## Sec. 6.003. WATER DISTRICTS EXEMPT FROM APPEAL BOND

## CHAPTER 6. GOVERNMENTAL EXEMPTION FROM BOND AND SECURITY REQUIREMENTS

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

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

- (1) this state;
- (2) a department of this state;
- (3) the head of a department of this state;
- (4) a county of this state;
- (5) the Federal Housing Administration;
- (6) the Federal National Mortgage Association;
- (7) the Government National Mortgage Association;
- (8) the Veterans' Administration;
- (9) the administrator of veterans affairs; and

(10) any national mortgage savings and loan insurance corporation created by an act of congress as a national relief organization that operates on a statewide basis.

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

Sec. 6.002. **CITIES EXEMPT FROM SECURITY FOR COURT COSTS.** Security for costs may not be required of an incorporated city or town of this state in an action, suit, or proceeding. (V.A.C.S. Art. 2072 (part).)

Sec. 6.003. **WATER DISTRICTS EXEMPT FROM APPEAL BOND.** (a) A governmental entity listed in Subsection (b) may not be required to give bond on an appeal or writ of error taken in a civil case that the entity is prosecuting or defending in its official capacity.

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

- (1) a water improvement district, a water control and improvement district, or a water control and preservation district organized under state law;
- (2) a levee improvement district organized under state law; and
- (3) a drainage district organized under state law. (V.A.C.S. Art. 2276a.)

## CHAPTER 7. LIABILITY OF COURT OFFICERS

### SUBCHAPTER A. LIABILITY OF OFFICER

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

Sec. 7.002. **LIABILITY FOR DEPOSITS PENDING SUIT**

Sec. 7.003. **LIABILITY REGARDING EXECUTION OF WRITS**

[Sections 7.004-7.010 reserved for expansion]

### SUBCHAPTER B. LIABILITY OF ATTORNEY

Sec. 7.011. **ATTORNEY'S LIABILITY FOR COSTS**

[Sections 7.012-7.020 reserved for expansion]

### SUBCHAPTER C. SUIT ON OFFICIAL BONDS

Sec. 7.021. **SUIT ON OFFICIAL BONDS**

## CHAPTER 7. LIABILITY OF COURT OFFICERS

### SUBCHAPTER A. LIABILITY OF OFFICER

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

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

Sec. 7.002. **LIABILITY FOR DEPOSITS PENDING SUIT.** (a) An officer who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action shall seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court.

(b) The officer shall keep in his office as part of his records an itemized inventory of property deposited with the court. The inventory must list the disposition of the property and the account for which the property was received.

(c) At the expiration of the officer's term, the officer shall transfer all deposited property and the inventory to the officer's successor in office. The successor shall give a receipt for the transferred property and the inventory.

(d) This section does not exempt an officer or the officer's surety from liability on the officer's bond due to neglect or other default in regard to the deposited property. (V.A.C.S. Art. 2290.)

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

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

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

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

[Sections 7.004-7.010 reserved for expansion]

## **SUBCHAPTER B. LIABILITY OF ATTORNEY**

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

[Sections 7.012-7.020 reserved for expansion]

## **SUBCHAPTER C. SUIT ON OFFICIAL BONDS**

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

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

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

[Chapters 8-14 reserved for expansion]

## **SUBTITLE B. TRIAL MATTERS**

### **CHAPTER 15. VENUE**

#### **SUBCHAPTER A. GENERAL RULE**

Sec. 15.001. **VENUE: GENERAL RULE**

[Sections 15.002-15.010 reserved for expansion]

#### **SUBCHAPTER B. MANDATORY VENUE**

Sec. 15.011. **LAND**

Sec. 15.012. **INJUNCTION AGAINST SUIT**

Sec. 15.013. **INJUNCTION AGAINST EXECUTION OF JUDGMENT**

Sec. 15.014. **HEAD OF STATE DEPARTMENT**

Sec. 15.015. **COUNTIES**

Sec. 15.016. **OTHER MANDATORY VENUE**

Sec. 15.017. **LIBEL, SLANDER, OR INVASION OF PRIVACY**

[Sections 15.018-15.030 reserved for expansion]

#### **SUBCHAPTER C. PERMISSIVE VENUE**

Sec. 15.031. **EXECUTOR; ADMINISTRATOR; GUARDIAN**

Sec. 15.032. **INSURANCE**

Sec. 15.033. **BREACH OF WARRANTY BY MANUFACTURER**

Sec. 15.034. **RAILWAY PERSONAL INJURIES**

Sec. 15.035. **CONTRACT IN WRITING**

Sec. 15.036. **CORPORATIONS AND ASSOCIATIONS**

Sec. 15.037. **FOREIGN CORPORATIONS**

- Sec. 15.038. OTHER PERMISSIVE VENUE
- Sec. 15.039. TRANSIENT PERSON
- Sec. 15.040. NONRESIDENTS; RESIDENCE UNKNOWN

[Sections 15.041-15.060 reserved for expansion]

**SUBCHAPTER D. GENERAL PROVISIONS**

- Sec. 15.061. JOINDER OF DEFENDANTS OR CLAIMS
- Sec. 15.062. COUNTERCLAIMS, CROSS CLAIMS, AND THIRD-PARTY CLAIMS
- Sec. 15.063. TRANSFER
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[Sections 15.066-15.080 reserved for expansion]

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- Sec. 15.081. APPLICATION
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- Sec. 15.085. EXECUTOR; ADMINISTRATOR; GUARDIAN
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- Sec. 15.087. OPTION: SUIT IN DEFENDANT'S COUNTY OF RESIDENCE
- Sec. 15.088. NONRESIDENT; RESIDENCE UNKNOWN
- Sec. 15.089. TRANSIENT PERSON
- Sec. 15.090. PERSONAL PROPERTY
- Sec. 15.091. RENTS
- Sec. 15.092. CONTRACT
- Sec. 15.093. TORTS
- Sec. 15.094. CORPORATION; ASSOCIATION; JOINT-STOCK COMPANY
- Sec. 15.095. RAILROAD COMPANIES; CARRIERS
- Sec. 15.096. STEAMBOAT OR OTHER VESSEL
- Sec. 15.097. INSURANCE COMPANIES
- Sec. 15.098. PLEADING REQUIREMENTS
- Sec. 15.099. MORE THAN ONE JUSTICE
- Sec. 15.100. DISQUALIFIED JUSTICE

**SUBTITLE B. TRIAL MATTERS**

**CHAPTER 15. VENUE**

**SUBCHAPTER A. GENERAL RULE**

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

[Sections 15.002-15.010 reserved for expansion]

**SUBCHAPTER B. MANDATORY VENUE**

Sec. 15.011. LAND. Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property is located. (V.A.C.S. Art. 1995, Sec. 2(a).)

Sec. 15.012. **INJUNCTION AGAINST SUIT.** Actions to stay proceedings in a suit shall be brought in the county in which the suit is pending. (V.A.C.S. Art. 1995, Sec. 2(b).)

Sec. 15.013. **INJUNCTION AGAINST EXECUTION OF JUDGMENT.** Actions to restrain execution of a judgment based on invalidity of the judgment or of the writ shall be brought in the county in which the judgment was rendered. (V.A.C.S. Art. 1995, Sec. 2(c).)

Sec. 15.014. **HEAD OF STATE DEPARTMENT.** An action for mandamus against the head of a department of the state government shall be brought in Travis County. (V.A.C.S. Art. 1995, Sec. 2(d).)

Sec. 15.015. **COUNTIES.** An action against a county shall be brought in that county. (V.A.C.S. Art. 1995, Sec. 2(e).)

Sec. 15.016. **OTHER MANDATORY VENUE.** An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute. (V.A.C.S. Art. 1995, Sec. 2(f).)

Sec. 15.017. **LIBEL, SLANDER, OR INVASION OF PRIVACY.** A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff. (V.A.C.S. Art. 1995, Sec. 2(g).)

[Sections 15.018-15.030 reserved for expansion]

### SUBCHAPTER C. PERMISSIVE VENUE

Sec. 15.031. **EXECUTOR; ADMINISTRATOR; GUARDIAN.** If the suit is against an executor, administrator, or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which the estate is administered, or if the suit is against an executor, administrator, or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator, or guardian represents, the suit may be brought in the county in which the negligent act or omission of the person whose estate the executor, administrator, or guardian represents occurred. (V.A.C.S. Art. 1995, Sec. 3(a).)

Sec. 15.032. **INSURANCE.** Suit against fire, marine, or inland insurance companies may also be commenced in any county in which the insured property was situated. A suit on a policy may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health, and accident insurance company in the county in which the home office of the company is located or in the county in which the loss has occurred or in which the policyholder or beneficiary instituting the suit resides. (V.A.C.S. Art. 1995, Sec. 3(b).)

Sec. 15.033. **BREACH OF WARRANTY BY MANUFACTURER.** A suit for breach of warranty by a manufacturer of consumer goods may be brought in any county in which all or a part of the cause of action accrued, in any county in which the manufacturer may have an agency or representative, in the county in which the principal office of the company may be situated, or in the county in which the plaintiff or plaintiffs reside. (V.A.C.S. Art. 1995, Sec. 3(c).)

Sec. 15.034. **RAILWAY PERSONAL INJURIES.** A suit against a railroad corporation or against any assignee, trustee, or receiver operating any railway in this state for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred or in the county in which the plaintiff resided at the time of the injury. If the defendant railroad corporation does not run or operate its railway in or through the county in which the plaintiff resided at the time of the injury and has no agent in that county, then the suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road or has an agent. When an injury occurs within one-half mile of the boundary line dividing two counties, suit may be brought in either of those counties. If the plaintiff is a nonresident of this state, the suit shall be brought in the county in which the injury occurred or in the county in which the defendant railroad corporation has its principal office. (V.A.C.S. Art. 1995, Sec. 3(d).)

Sec. 15.035. **CONTRACT IN WRITING.** (a) Except as provided by Subsection (b), if a person has contracted in writing to perform an obligation in a particular county, expressly naming the county or a definite place in that county by that writing, suit on or by reason of the obligation may be brought against him either in that county or in the county in which the defendant has his domicile.

(b) In an action founded on a contractual obligation of the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use, suit by a creditor on or

by reason of the obligation may be brought against the defendant either in the county in which the defendant in fact signed the contract or in the county in which the defendant resides when the action is commenced. No term or statement contained in an obligation described in this section shall constitute a waiver of these provisions. (V.A.C.S. Art. 1995, Sec. 3(e).)

**Sec. 15.036. CORPORATIONS AND ASSOCIATIONS.** A suit against a private corporation, association, partnership, or joint-stock company may be brought in the county in which its principal office is situated, in the county in which all or a part of the cause of action arose, or in the county in which the plaintiff resided when all or a part of the cause of action arose, provided the corporation, association, partnership, or joint-stock company has an agency or representative in the county, or, if the corporation, association, partnership, or joint-stock company had no agency or representative in the county in which the plaintiff resided, when all or a part of the cause of action arose, then suit may be brought in the county nearest that in which plaintiff resided at that time in which the corporation, association, partnership, or joint-stock company then had an agency or representative. A suit against a railroad corporation or against any assignee, trustee, or receiver operating its railway may also be brought in any county through or into which the railroad of the corporation extends or is operated. A suit against a receiver of a person or a corporation may also be brought as otherwise provided by law. (V.A.C.S. Art. 1995, Sec. 3(f).)

**Sec. 15.037. FOREIGN CORPORATIONS.** Foreign corporations, private or public, joint-stock companies or associations, not incorporated by the laws of this state, and doing business in this state, may be sued in any county in which all or a part of the cause of action accrued, or in any county in which the company may have an agency or representative, or in the county in which the principal office of the company may be situated, or, if the defendant corporation has no agent or representative in this state, then in the county in which the plaintiffs or either of them reside. (V.A.C.S. Art. 1995, Sec. 3(g).)

**Sec. 15.038. OTHER PERMISSIVE VENUE.** An action governed by any other statute prescribing permissive venue may be brought in the county allowed by that statute. (V.A.C.S. Art. 1995, Sec. 3(h).)

**Sec. 15.039. TRANSIENT PERSON.** A transient person may be sued in any county in which he may be found. (V.A.C.S. Art. 1995, Sec. 3(i).)

**Sec. 15.040. NONRESIDENTS; RESIDENCE UNKNOWN.** If one or all of several defendants reside outside this state or if their residence is unknown, suit may be brought in the county in which the plaintiff resides. (V.A.C.S. Art. 1995, Sec. 3(j).)

[Sections 15.041-15.060 reserved for expansion]

#### SUBCHAPTER D. GENERAL PROVISIONS

**Sec. 15.061. JOINDER OF DEFENDANTS OR CLAIMS.** When two or more parties are joined as defendants in the same action or two or more claims or causes of action are properly joined in one action and the court has venue of an action or claim against any one defendant, the court also has venue of all claims or actions against all defendants unless one or more of the claims or causes of action is governed by one of the provisions of Subchapter B requiring transfer of the claim or cause of action, on proper objection, to the mandatory county. (V.A.C.S. Art. 1995, Sec. 4(a).)

**Sec. 15.062. COUNTERCLAIMS, CROSS CLAIMS, AND THIRD-PARTY CLAIMS.** Venue of the main action shall establish venue of a counterclaim, cross claim, or third-party claim properly joined under the Texas Rules of Civil Procedure. (V.A.C.S. Art. 1995, Sec. 4(b).)

**Sec. 15.063. TRANSFER.** The court, on motion filed and served concurrently with or before the filing of the answer, shall transfer an action to another county of proper venue if:

- (1) the county in which the action is pending is not a proper county as provided by this chapter;
- (2) an impartial trial cannot be had in the county in which the action is pending; or
- (3) written consent of the parties to transfer to any other county is filed at any time. (V.A.C.S. Art. 1995, Sec. 4(c).)

**Sec. 15.064. HEARINGS.** (a) In all venue hearings, no factual proof concerning the merits of the case shall be required to establish venue. The court shall determine venue questions from the pleadings and affidavits. No interlocutory appeal shall lie from the determination.

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



Sec. 15.065. **WATERCOURSE OR ROADWAY FORMING COUNTY BOUNDARY.** If a river, watercourse, highway, road, or street forms the boundary line between two counties, the courts of each county have concurrent jurisdiction over the parts of the watercourse or roadway that form the boundary of the county in the same manner as if the watercourse or roadway were in that county. (V.A.C.S. Art. 1996.)

[Sections 15.066-15.080 reserved for expansion]

### SUBCHAPTER E. SUITS BROUGHT IN JUSTICE COURT

Sec. 15.081. **APPLICATION.** This subchapter applies only to suits brought in a justice court. (V.A.C.S. Art. 2390 (part).)

Sec. 15.082. **VENUE: GENERAL RULE.** Except as otherwise provided by this subchapter or by any other law, a suit in justice court shall be brought in the county and precinct in which one or more defendants reside. (V.A.C.S. Art. 2390 (part).)

Sec. 15.083. **RESIDENCE OF A SINGLE MAN.** A single man's residence is where he boards. (V.A.C.S. Art. 2391.)

Sec. 15.084. **FORCIBLE ENTRY AND DETAINER.** A suit for forcible entry and detainer shall be brought in the precinct in which all or part of the premises is located. (V.A.C.S. Art. 2390, Subdiv. 1.)

Sec. 15.085. **EXECUTOR; ADMINISTRATOR; GUARDIAN.** A suit against an executor, an administrator, or a guardian shall be brought in the county in which the administration or guardianship is pending and in the precinct in which the county seat is located. (V.A.C.S. Art. 2390, Subdiv. 2.)

Sec. 15.086. **COUNTIES.** A suit against a county shall be brought in the precinct in which the county seat of that county is located. (V.A.C.S. Art. 2390, Subdiv. 3.)

Sec. 15.087. **OPTION: SUIT IN DEFENDANT'S COUNTY OF RESIDENCE.** A suit to which a permissive venue section of this subchapter applies may be brought and maintained either in the county provided for by that section or in the county in which the defendant resides. (V.A.C.S. Art. 2390 (part).)

Sec. 15.088. **NONRESIDENT; RESIDENCE UNKNOWN.** A suit against a nonresident of this state or against a person whose residence is unknown may be brought in the county and precinct in which the plaintiff resides. (V.A.C.S. Art. 2390, Subdiv. 8.)

Sec. 15.089. **TRANSIENT PERSON.** A suit against a transient person may be brought in any county and precinct in which the transient person is found. (V.A.C.S. Art. 2390, Subdiv. 7.)

Sec. 15.090. **PERSONAL PROPERTY.** A suit to recover personal property may be brought in the county and precinct in which the property is located. (V.A.C.S. Art. 2390, Subdiv. 9.)

Sec. 15.091. **RENTS.** A suit to recover rents may be brought in the county and precinct in which all or part of the rented premises is located. (V.A.C.S. Art. 2390, Subdiv. 5.)

Sec. 15.092. **CONTRACT.** (a) Except as otherwise provided by this section, a suit on a written contract that promises performance at a particular place may be brought in the county and precinct in which the contract was to be performed.

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

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

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

Sec. 15.093. **TORTS.** A tort suit for damages may be brought in the county and precinct in which the injury was inflicted. (V.A.C.S. Art. 2390, Subdiv. 6.)

Sec. 15.094. **CORPORATION; ASSOCIATION; JOINT-STOCK COMPANY.** A suit against a private corporation, association, or joint-stock company may be brought in the county and precinct in which:

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

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

(3) the principal office of the corporation, association, or company is located. (V.A.C.S.

Art. 2390, Subdiv. 10.)

Sec. 15.095. **RAILROAD COMPANIES; CARRIERS.** A suit against a railroad company, a canal company, or the owners of a line of transportation vehicles for injury to a person or property on the railroad, canal, or line of vehicles or for liability as a carrier may be brought in a precinct through which that railroad, canal, or line of vehicles passes or in a precinct in which the route of that railroad, canal, or vehicle begins or ends. (V.A.C.S. Art. 2390, Subdiv. 11.)

Sec. 15.096. STEAMBOAT OR OTHER VESSEL. A suit against the owner of a steamboat or other vessel may be brought in the county or precinct in which:

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

Sec. 15.097. INSURANCE COMPANIES. (a) A suit against a fire, marine, or inland marine insurance company may be brought in the county and precinct in which all or part of the insured property was located.

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

Sec. 15.098. PLEADING REQUIREMENTS. If a suit is brought in a county or precinct in which the defendant does not reside, the citation or pleading must affirmatively show that the suit comes within an exception provided for by this subchapter. (V.A.C.S. Art. 2390, Subdiv. 13 (part).)

Sec. 15.099. MORE THAN ONE JUSTICE. If there is more than one justice of the peace in a precinct or in an incorporated city or town, suit may be brought before any justice of the peace in that precinct or incorporated city or town. (V.A.C.S. Art. 2392.)

Sec. 15.100. DISQUALIFIED JUSTICE. If the justice in the proper precinct is not qualified to try the suit, suit may be brought before the nearest qualified justice in the county. (V.A.C.S. Art. 2393.)

CHAPTER 16. LIMITATIONS

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### CHAPTER 16. LIMITATIONS

#### SUBCHAPTER A. LIMITATIONS OF PERSONAL ACTIONS

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

- (1) younger than 18 years of age, regardless of whether the person is married;
- (2) imprisoned; or
- (3) of unsound mind.

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

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

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

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

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

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

Sec. 16.004. FOUR-YEAR LIMITATIONS PERIOD. (a) A person must bring suit on the following actions not later than four years after the day the cause of action accrues:

- (1) specific performance of a contract for the conveyance of real property;
- (2) penalty or damages on the penal clause of a bond to convey real property; or
- (3) debt.

(b) A person must bring suit on the bond of an executor, administrator, or guardian not later than four years after the day of the death, resignation, removal, or discharge of the executor, administrator, or guardian.

(c) A person must bring suit against his partner for a settlement of partnership accounts, and must bring an action on an open or stated account, or on a mutual and current account concerning the trade of merchandise between merchants or their agents or factors, not later than four years after the day that the cause of action accrues. For purposes of this subsection, the cause of action accrues on the day that the dealings in which the parties were interested together cease. (V.A.C.S. Arts. 5527, 5528, 5531.)

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

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

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

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

(c) If suit is not brought within the period provided by this section, the person in possession of the real property receives complete title to the property by limitations and the right of the city or county to revoke or rescind the order or ordinance is barred. (V.A.C.S. Art. 5526a.)

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

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

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

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

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

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

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

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

(b) This section applies to suit for:

- (1) injury, damage, or loss to real or personal property;
- (2) personal injury;
- (3) wrongful death;
- (4) contribution; or
- (5) indemnity.

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

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

(b) This section applies to suit for:

- (1) injury, damage, or loss to real or personal property;
- (2) personal injury;
- (3) wrongful death;
- (4) contribution; or
- (5) indemnity.

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

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

(e) This section does not bar an action:

- (1) on a written warranty, guaranty, or other contract that expressly provides for a longer effective period;
- (2) against a person in actual possession or control of the real property at the time that the damage, injury, or death occurs; or
- (3) based on wilful misconduct or fraudulent concealment in connection with the performance of the construction or repair.

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

[Sections 16.010-16.020 reserved for expansion]

## SUBCHAPTER B. LIMITATIONS OF REAL PROPERTY ACTIONS

**Sec. 16.021. DEFINITIONS.** In this subchapter:

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

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

- (A) is not regular because of a muniment that is not properly recorded or is only in writing or because of a similar defect that does not want of intrinsic fairness or honesty; or
- (B) is based on a certificate of headright, land warrant, or land scrip.

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

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

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

- (1) younger than 18 years of age, regardless of whether the person is married;
- (2) imprisoned;
- (3) of unsound mind; or
- (4) serving in the United States Armed Forces during time of war.

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

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

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

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

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

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

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

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

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

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

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

Sec. 16.028. ADVERSE POSSESSION WITH RECORDED INSTRUMENT: 25-YEAR LIMITATIONS PERIOD. (a) A person, regardless of whether the person is or has been under a legal disability, may not maintain an action for the recovery of real property held for 25 years before the commencement of the action in peaceable and adverse possession by another who holds the property in good faith and under a deed or other instrument purporting to convey the property that is recorded in the deed records of the county where any part of the real property is located.

(b) Adverse possession of any part of the real property held under a recorded deed or other recorded instrument that purports to convey the property extends to and includes all of the property described in the instrument, even though the instrument is void on its face or in fact.

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

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

- (1) for one or more years during the 25 years preceding the filing of the suit the person holding apparent record title to the property did not exercise dominion over or pay taxes on the property; and
- (2) during that period the opposing parties and those whose estate they own have openly exercised dominion over and have asserted a claim to the land and have paid taxes on it annually before becoming delinquent for as long as 25 years.

(b) This section does not affect a statute of limitations, a right to prove title by circumstantial evidence under the case law of this state, or a suit between a trustee and a beneficiary of the trust. (V.A.C.S. Art. 5519a.)

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

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

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

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

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

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

Sec. 16.032. **ADJACENT LAND.** Possession of land that belongs to another by a person owning or claiming 5,000 or more fenced acres that adjoin the land is not peaceable and adverse as described by Section 16.026 unless:

- (1) the land is separated from the adjacent enclosed tract by a substantial fence;
- (2) at least one-tenth of the land is cultivated and used for agricultural purposes or used for manufacturing purposes; or
- (3) there is actual possession of the land. (V.A.C.S. Art. 5512.)

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

- (1) lack of the signature of a proper corporate officer;
- (2) lack of a corporate seal;
- (3) failure of the record to show the corporate seal used;
- (4) failure of the record to show authority of the board of directors or stockholders of a corporation;
- (5) execution and delivery of the instrument by a corporation that had been dissolved, whose charter had expired, or whose franchise had been canceled, withdrawn, or forfeited;
- (6) acknowledgment of the instrument in an individual, rather than a representative or official, capacity;
- (7) execution of the instrument by a trustee without record of the authority of the trustee or proof of the facts recited in the instrument;
- (8) failure of the public officer taking the acknowledgment to affix the official seal to the instrument;
- (9) failure of the record to show the notarial seal; or
- (10) wording of the stated consideration that may or might create an implied lien in favor of the grantor.

(b) This section does not apply to a forged instrument. (V.A.C.S. Art. 5523a.)

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

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

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

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

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

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

- (1) Section 16.062, providing for suspension in the event of death; or
- (2) Section 16.036, providing for recorded extensions of lien debts.

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

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

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

(1) a superior title retained by a vendor in a deed of conveyance or a purchase money note; or

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

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

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

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

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

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

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

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

[Sections 16.038-16.050 reserved for expansion]

### SUBCHAPTER C. RESIDUAL LIMITATIONS PERIOD

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

[Sections 16.052-16.060 reserved for expansion]

### SUBCHAPTER D. MISCELLANEOUS PROVISIONS

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

Sec. 16.062. **EFFECT OF DEATH.** (a) The death of a person against whom or in whose favor there may be a cause of action suspends the running of an applicable statute of limitations for 12 months after the death.

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

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

Sec. 16.064. **EFFECT OF LACK OF JURISDICTION.** (a) The period between the date of filing an action in a trial court and the date of a second filing of the same action in a different court suspends the running of the applicable statute of limitations for the period if:

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

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

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

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

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



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

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

Sec. 16.067. **CLAIM INCURRED PRIOR TO ARRIVAL IN THIS STATE.** (a) A person may not bring an action to recover a claim against a person who has moved to this state if the claim is barred by the law of limitations of the state or country from which the person came.

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

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

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

Sec. 16.069. **COUNTERCLAIM OR CROSS CLAIM.** (a) If a counterclaim or cross claim arises out of the same transaction or occurrence that is the basis of an action, a party to the action may file the counterclaim or cross claim even though as a separate action it would be barred by limitation on the date the party's answer is required.

(b) The counterclaim or cross claim must be filed not later than the 30th day after the date on which the party's answer is required. (V.A.C.S. Art. 5539c.)

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

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

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

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

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

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

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

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

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

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

### SUBCHAPTER A. PARTIES TO SUIT

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Sec. 17.003. **SUIT AGAINST NONRESIDENT OR TRANSIENT PROPERTY OWNER**

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CHAPTER 17. PARTIES; CITATION; LONG-ARM JURISDICTION

SUBCHAPTER A. PARTIES TO SUIT

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

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

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

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

Sec. 17.003. **SUIT AGAINST NONRESIDENT OR TRANSIENT PROPERTY OWNER.** For the purpose of establishing title to property, settling a lien or encumbrance on property, or determining an estate, interest, lien, or encumbrance, a person who claims an interest in the property may sue another person who claims an adverse interest or a lien or encumbrance but resides outside this state, resides in an unknown place, or is a transient. The plaintiff is not required to have actual possession of the property. (V.A.C.S. Arts. 1975, 1976 (part).)

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

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

- (1) the person bringing suit claims ownership of an interest in the land or has a claim or cause of action related to the land against the unknown owner or claimant; and
- (2) the unknown owner or claimant:

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

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

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

[Sections 17.006-17.020 reserved for expansion]

**SUBCHAPTER B. CITATION GENERALLY**

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

- (1) the action grows out of or is connected with the business transacted in this state; and
- (2) the individual, partnership, or association:
  - (A) is not a resident of the county;
  - (B) is not a resident of this state; or
  - (C) is a resident of the county but has not been found for service of process.

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

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

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

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

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

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

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

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

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

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

(b) If no officer on whom citation may be served resides in the county in which suit is brought and the corporation or association has no agent in that county, citation may be served on any agent representing the corporation or association in this state. (V.A.C.S. Art. 2029.)

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

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

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

**Sec. 17.025. ASSESSMENT OF POSTAGE COST FOR MAIL SERVICE.** (a) If a public official is required or permitted by law to serve legal process by mail, including process in a suit for delinquent taxes, the official may:

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

(2) assess the expense of postage as costs.

(b) Charges under this section are in addition to other charges allowed by law for services performed by the official serving the process. (V.A.C.S. Art. 2041b.)

[Sections 17.026-17.040 reserved for expansion]

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

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

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

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

**Sec. 17.042. ACTS CONSTITUTING BUSINESS IN THIS STATE.** In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) commits a tort in whole or in part in this state; or

(3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state. (V.A.C.S. Art. 2031b, Sec. 4.)

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

**Sec. 17.044. SUBSTITUTED SERVICE ON SECRETARY OF STATE.** (a) The secretary of state is an agent for service of process or complaint on a nonresident who:

(1) is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process;

(2) has one or more resident agents for service of process, but two unsuccessful attempts have been made on different business days to serve each agent; or

(3) is not required to designate an agent for service in this state, but becomes a nonresident after a cause of action arises in this state but before the cause is matured by suit in a court of competent jurisdiction.

(b) The secretary of state is an agent for service of process on a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a

designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party. (V.A.C.S. Art. 2031b, Secs. 1, 3, 6 (part).)

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

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

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

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

[Sections 17.046-17.060 reserved for expansion]

#### SUBCHAPTER D. LONG-ARM JURISDICTION OVER NONRESIDENT MOTOR VEHICLE OPERATOR

Sec. 17.061. DEFINITIONS. In this subchapter:

(1) "Agent" includes a servant, employee, heir, legal representative, executor, administrator, or guardian.

(2) "Chairman" means the chairman of the State Highway and Public Transportation Commission.

(3) "Motor vehicle" includes a motorcycle. (New.)

Sec. 17.062. SUBSTITUTED SERVICE ON CHAIRMAN OF STATE HIGHWAY AND PUBLIC TRANSPORTATION COMMISSION. (a) The chairman of the State Highway and Public Transportation Commission is an agent for service of process on a person who is a nonresident or an agent of a nonresident in any suit against the person or agent that grows out of a collision or accident in which the person or his agent is involved while operating a motor vehicle in this state.

(b) Process may be served on the chairman in accordance with this section for a nonresident who was a resident at the time the cause of action accrued but has subsequently moved from the state. (V.A.C.S. Art. 2039a, Sec. 1 (part).)

Sec. 17.063. METHOD OF SERVICE; NOTICE TO NONRESIDENT. (a) A certified copy of the process must be served on the chairman not later than the 20th day prior to the date of return stated in the process.

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

(1) a copy of the process; and

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

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

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

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

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

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

(1) state when it was served;

(2) state on whom it was served; and

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

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

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

Sec. 17.067. **DEFAULT JUDGMENT.** If process is served on the chairman under this subchapter, a court may not grant default judgment against the defendant before the 21st day after the day on which the chairman was served. (V.A.C.S. Art. 2039a, Sec. 5 (part).)

Sec. 17.068. **CONTINUANCE OR POSTPONEMENT.** A court may continue or postpone an action in which process is served under this subchapter as necessary to afford the defendant reasonable opportunity to defend. (V.A.C.S. Art. 2039a, Sec. 6.)

Sec. 17.069. **CHAIRMAN'S CERTIFICATE.** (a) On request of any party and payment of a \$25 fee, the chairman shall certify the occurrence or performance of any duty, act, omission, transaction, or happening contemplated or required by this subchapter, including the wording of any registered letter received.

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

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

#### [Sections 17.070-17.090 reserved for expansion] SUBCHAPTER E. CITATION OF NONRESIDENTS--MISCELLANEOUS PROVISIONS

Sec. 17.091. **SUBSTITUTED SERVICE IN DELINQUENT TAX CASES.** (a) In a suit growing out of property taxation by the state or a legal subdivision of the state in which a person who is a defendant is a nonresident, the executive director of the State Property Tax Board is an agent for service of process on that defendant if the defendant owned, had, or claimed a taxable interest in property in this state on the first day of a tax year for which taxes have not been paid.

(b) Process may be served on the executive director in accordance with this section for a nonresident who was a resident at the time the cause of action accrued but has subsequently moved.

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

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

Sec. 17.092. **SERVICE ON NONRESIDENT UTILITY SUPPLIER.** A nonresident individual or partnership that supplies gas, water, electricity, or other public utility service to a city, town, or village in this state may be served citation by serving the local agent, representative, superintendent, or person in charge of the nonresident's business. (V.A.C.S. Art. 2033a.)

Sec. 17.093. **SERVICE ON FOREIGN RAILWAY.** In addition to other methods of service provided by law, process may be served on a foreign railway by serving:

(1) a train conductor who:

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

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

(2) an agent who:

(A) has an office in this state; and

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

### CHAPTER 18. EVIDENCE

#### SUBCHAPTER A. DOCUMENTARY EVIDENCE

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

[Sections 18.002-18.030 reserved for expansion]

#### SUBCHAPTER B. PRESUMPTIONS

Sec. 18.031. **FOREIGN INTEREST RATE**

## CHAPTER 18. EVIDENCE

## SUBCHAPTER A. DOCUMENTARY EVIDENCE

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

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

(c) The affidavit must:

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

(2) be made by:

(A) the person who provided the service; or

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

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

(d) The party offering the affidavit in evidence or the party's attorney must file the affidavit with the clerk of the court and serve a copy of the affidavit on each other party to the case at least 14 days before the day on which evidence is first presented at the trial of the case.

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

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

[Sections 18.002-18.030 reserved for expansion]

## SUBCHAPTER B. PRESUMPTIONS

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

## CHAPTER 19. LOST RECORDS

Sec. 19.001. APPLICATION OF CHAPTER

Sec. 19.002. PAROL PROOF

Sec. 19.003. APPLICATION FOR RELIEF

Sec. 19.004. CITATION

Sec. 19.005. ORDER

Sec. 19.006. EFFECT OF ORDER

Sec. 19.007. METHOD NOT EXCLUSIVE

Sec. 19.008. RERECORDATION OF ORIGINAL DOCUMENT

Sec. 19.009. CERTIFIED COPY

## CHAPTER 19. LOST RECORDS

Sec. 19.001. APPLICATION OF CHAPTER. This chapter applies to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 19.006. **EFFECT OF ORDER.** The order supplying the record:

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

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

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

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

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

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

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

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

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

## CHAPTER 20. DEPOSITIONS

Sec. 20.001. **PERSONS WHO MAY TAKE A DEPOSITION**

Sec. 20.002. **TESTIMONY REQUIRED BY FOREIGN JURISDICTION**

## CHAPTER 20. DEPOSITIONS

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

(1) a clerk of a district court;

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

(3) a notary public of this state.

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

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

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

(3) any notary public.

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



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

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

(3) any notary public.

(d) A deposition of a witness who is alleged to be a member of the United States Armed Forces or of a United States Armed Forces Auxiliary or who is alleged to be a civilian employed by or accompanying the armed forces or an auxiliary outside the United States may be taken by a commissioned officer in the United States Armed Forces or United States Armed Forces Auxiliary or by a commissioned officer in the United States Armed Forces Reserve or an auxiliary of it. If a deposition appears on its face to have been taken as provided by this subsection and the deposition or any part of it is offered in evidence, it is presumed, absent pleading and proof to the contrary, that the person taking the deposition as a commissioned officer was a commissioned officer on the date that the deposition was taken, and that the deponent was a member of the authorized group of military personnel or civilians. (V.A.C.S. Art. 3746.)

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

## CHAPTER 21. INTERPRETERS

### SUBCHAPTER A. INTERPRETERS FOR THE DEAF

Sec. 21.001. DEFINITION

Sec. 21.002. INTERPRETERS FOR DEAF PERSONS

Sec. 21.003. QUALIFICATIONS

Sec. 21.004. INTERPRETER'S POSITION IN COURT

Sec. 21.005. OATH

Sec. 21.006. FEES AND TRAVEL EXPENSES

Sec. 21.007. RECORDING OF TESTIMONY

Sec. 21.008. PRIVILEGE OF INTERPRETER FOR THE DEAF

[Sections 21.009-21.020 reserved for expansion]

### SUBCHAPTER B. SPANISH LANGUAGE INTERPRETERS IN CERTAIN BORDER COUNTIES

Sec. 21.021. APPLICATION

Sec. 21.022. APPOINTMENT

Sec. 21.023. INTERPRETER'S QUALIFICATIONS

[Sections 21.024-21.030 reserved for expansion]

### SUBCHAPTER C. INTERPRETERS FOR COUNTY COURTS AT LAW

Sec. 21.031. APPOINTMENT; TERMINATION OF EMPLOYMENT; DUTIES

Sec. 21.032. OATH

## CHAPTER 21. INTERPRETERS

### SUBCHAPTER A. INTERPRETERS FOR THE DEAF

Sec. 21.001. DEFINITION. In this subchapter, "deaf person" means an individual who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of proceedings or communication with others. (V.A.C.S. Art. 3712a, Sec. (a) (part).)

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

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

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

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

Sec. 21.005. **OATH.** The interpreter shall take an oath that the interpreter will:

(1) make a true interpretation to the deaf person of all the case proceedings in a language that the deaf person understands; and

(2) repeat the deaf person's answers to questions to counsel, court, or jury in the English language, using the interpreter's best skill and judgment. (V.A.C.S. Art. 3712a, Sec. (c) (part).)

Sec. 21.006. **FEES AND TRAVEL EXPENSES.** (a) The interpreter shall be paid a reasonable fee determined by the court after considering the recommended fees of the Texas Commission for the Deaf.

(b) If the interpreter is required to travel, the interpreter's actual expenses of travel, lodging, and meals relating to the case shall be paid at the same rate provided for state employees.

(c) The interpreter's fee and expenses shall be paid from the general fund of the county in which the case was brought. (V.A.C.S. Art. 3712a, Sec. (d).)

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

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

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

[Sections 21.009-21.020 reserved for expansion]

## SUBCHAPTER B. SPANISH LANGUAGE INTERPRETERS IN CERTAIN BORDER COUNTIES

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

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

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

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

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

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

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

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

[Sections 21.024-21.030 reserved for expansion]

## SUBCHAPTER C. INTERPRETERS FOR COUNTY COURTS AT LAW

Sec. 21.031. **APPOINTMENT; TERMINATION OF EMPLOYMENT; DUTIES.** (a) The judge of a county court at law may appoint an official interpreter for that court and may terminate that interpreter's employment at any time.

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

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

## CHAPTER 22. WITNESSES

### SUBCHAPTER A. WITNESSES

Sec. 22.001. WITNESS FEES

[Sections 22.002-22.010 reserved for expansion]

### SUBCHAPTER B. PRIVILEGES

Sec. 22.011. PRIVILEGE FROM ARREST

## CHAPTER 22. WITNESSES

### SUBCHAPTER A. WITNESSES

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

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

(2) six cents for each mile the witness travels in going to and returning from court.

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

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

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

[Sections 22.002-22.010 reserved for expansion]

### SUBCHAPTER B. PRIVILEGES

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

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

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

[Chapters 23-29 reserved for expansion]

## CHAPTER 30. MISCELLANEOUS PROVISIONS

Sec. 30.001. INSTRUMENT TO WAIVE SERVICE OR CONFESS JUDGMENT

Sec. 30.002. EXPIRATION OF JUDGE'S TERM; DEATH OF JUDGE

Sec. 30.003. LEGISLATIVE CONTINUANCE

## CHAPTER 30. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

## SUBTITLE C. JUDGMENTS

### CHAPTER 31. JUDGMENTS

Sec. 31.001. PASSAGE OF TITLE

Sec. 31.002. COLLECTION OF JUDGMENT THROUGH COURT PROCEEDING

Sec. 31.003. JUDGMENT AGAINST PARTNERSHIP

Sec. 31.004. EFFECT OF ADJUDICATION IN LOWER TRIAL COURT

Sec. 31.005. EFFECT OF ADJUDICATION IN SMALL CLAIMS OR JUSTICE OF THE PEACE COURT

Sec. 31.006. REVIVAL OF JUDGMENT SUBTITLE C. JUDGMENTS

### CHAPTER 31. JUDGMENTS

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

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

- (1) cannot readily be attached or levied on by ordinary legal process; and
- (2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

(b) The court may:

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

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

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

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

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

(e) The judgment creditor is entitled to recover reasonable costs, including attorney's fees. (V.A.C.S. Art. 3827a.)

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

Sec. 31.004. EFFECT OF ADJUDICATION IN LOWER TRIAL COURT. (a) A judgment or a determination of fact or law in a proceeding in a lower trial court is not res

judicata and is not a basis for estoppel by judgment in a proceeding in a district court, except that a judgment rendered in a lower trial court is binding on the parties thereto as to recovery or denial of recovery.

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

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

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

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

## CHAPTER 32. CONTRIBUTION

Sec. 32.001. APPLICATION

Sec. 32.002. RIGHT OF ACTION

Sec. 32.003. RECOVERY

## CHAPTER 32. CONTRIBUTION

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

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

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

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

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

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

## CHAPTER 33. COMPARATIVE NEGLIGENCE

### SUBCHAPTER A. COMPARATIVE NEGLIGENCE

Sec. 33.001. COMPARATIVE NEGLIGENCE

[Sections 33.002-33.010 reserved for expansion]

### SUBCHAPTER B. CONTRIBUTION

Sec. 33.011. DEFINITIONS

Sec. 33.012. DAMAGES IN PROPORTION

Sec. 33.013. DEFENDANT JOINTLY AND SEVERALLY LIABLE

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

Sec. 33.015. SETTLEMENT: TORT-FEASOR PARTY DEFENDANT

Sec. 33.016. CREDIT TOWARD LIABILITY

Sec. 33.017. CLAIMS DETERMINED IN PRIMARY SUIT

**CHAPTER 33. COMPARATIVE NEGLIGENCE**  
**SUBCHAPTER A. COMPARATIVE NEGLIGENCE**

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

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

[Sections 33.002-33.010 reserved for expansion]

**SUBCHAPTER B. CONTRIBUTION**

Sec. 33.011. **DEFINITIONS.** In this subchapter:

(1) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant.

(2) "Defendant" includes any party from whom a claimant seeks relief. (V.A.C.S. Art. 2212a, Sec. 2(a).)

Sec. 33.012. **DAMAGES IN PROPORTION.** If there is more than one defendant and the claimant's negligence does not exceed the total negligence of all defendants, contribution must be in proportion to the percentage of negligence attributable to each defendant. (V.A.C.S. Art. 2212a, Sec. 2(b).)

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

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

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

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

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

**CHAPTER 34. EXECUTION ON JUDGMENTS**

**SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT**

Sec. 34.001. **NO EXECUTION ON DORMANT JUDGMENT**

Sec. 34.002. **EFFECT OF PLAINTIFF'S DEATH**

Sec. 34.003. **EFFECT OF DEFENDANT'S DEATH**

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

Sec. 34.005. **LEVY ON PROPERTY OF SURETY**

[Sections 34.006-34.020 reserved for expansion]

**SUBCHAPTER B. RECOVERY OF SEIZED PROPERTY**

Sec. 34.021. **RECOVERY OF PROPERTY BEFORE SALE**

Sec. 34.022. **RECOVERY OF PROPERTY VALUE AFTER SALE**

[Sections 34.023-34.040 reserved for expansion]

### SUBCHAPTER C. SALE

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR

Sec. 34.042. SALE OF CITY LOTS

Sec. 34.043. SALE OF RURAL PROPERTY

Sec. 34.044. STOCK SHARES SUBJECT TO SALE

Sec. 34.045. CONVEYANCE OF TITLE AFTER SALE

Sec. 34.046. PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE

Sec. 34.047. DISTRIBUTION OF SALE PROCEEDS

Sec. 34.048. PURCHASE BY OFFICER VOID

[Sections 34.049-34.060 reserved for expansion]

### SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

Sec. 34.061. DUTY TOWARD SEIZED PERSONALTY; LIABILITY

Sec. 34.062. DUTY OF SUCCESSOR OFFICER

Sec. 34.063. IMPROPER ENDORSEMENT OF WRIT

Sec. 34.064. IMPROPER RETURN OF WRIT

Sec. 34.065. FAILURE TO LEVY OR SELL

Sec. 34.066. IMPROPER SALE

Sec. 34.067. FAILURE TO DELIVER MONEY COLLECTED

## CHAPTER 34. EXECUTION ON JUDGMENTS

### SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT

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

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

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

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

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

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

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

Sec. 34.005. LEVY ON PROPERTY OF SURETY. (a) If the face of a writ of execution or the endorsement of the clerk shows that one of the persons against whom it is issued is surety for another, the officer must first levy on the principal's property that is subject to execution and is located in the county in which the judgment is rendered.

(b) If property of the principal cannot be found that, in the opinion of the officer, is sufficient to satisfy the execution, the officer shall levy first on the principal's property that can be found and then on as much of the property of the surety as is necessary to satisfy the execution. (V.A.C.S. Art. 3786.)

[Sections 34.006-34.020 reserved for expansion]

### SUBCHAPTER B. RECOVERY OF SEIZED PROPERTY

Sec. 34.021. **RECOVERY OF PROPERTY BEFORE SALE.** A person is entitled to recover his property that has been seized through execution of a writ issued by a court if the judgment on which execution is issued is reversed or set aside and the property has not been sold at execution. (V.A.C.S. Art. 3799a, Sec. 3(a).)

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

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

[Sections 34.023-34.040 reserved for expansion]

### SUBCHAPTER C. SALE

Sec. 34.041. **SALE AT PLACE OTHER THAN COURTHOUSE DOOR.** If the public sale of land is required by law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by that law. (V.A.C.S. Art. 3805.)

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 34.047. **DISTRIBUTION OF SALE PROCEEDS.** (a) An officer shall deliver money collected on execution to the entitled party at the earliest opportunity.

(b) The officer is entitled to retain from the proceeds of a sale of personal property an amount equal to the reasonable expenses incurred by him in making the levy and keeping the property.



(c) If more money is received from the sale of property than is sufficient to satisfy the executions held by the officer, the officer shall immediately pay the surplus to the defendant or the defendant's agent or attorney. (V.A.C.S. Arts. 3800, 3824 (part), 3827.)

Sec. 34.048. **PURCHASE BY OFFICER VOID.** If an officer or his deputy conducting an execution sale directly or indirectly purchases the property, the sale is void. (V.A.C.S. Art. 3820.)

[Sections 34.049-34.060 reserved for expansion]

#### SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

Sec. 34.061. **DUTY TOWARD SEIZED PERSONALTY; LIABILITY.** (a) The officer shall keep securely all personal property on which he has levied and for which no delivery bond is given.

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

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

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

Sec. 34.064. **IMPROPER RETURN OF WRIT.** If an officer neglects or refuses to return a writ of execution as required by law or makes a false return on a writ of execution, the officer and his sureties are liable to the person entitled to receive the money collected on the execution for the full amount of the debt, plus interest and costs. The total amount is recoverable on motion of the plaintiff filed with the court that issued the writ, following five days' notice. (V.A.C.S. Art. 3826.)

Sec. 34.065. **FAILURE TO LEVY OR SELL.** If an officer fails or refuses to levy on or sell property subject to execution and the levy or sale could have taken place, the officer and his sureties are liable to the party entitled to receive the money collected on execution for the full amount of the debt, plus interest and costs. The total amount is recoverable on motion of the party filed with the court that issued the writ, following five days' notice to the officer and his sureties. (V.A.C.S. Art. 3825.)

Sec. 34.066. **IMPROPER SALE.** If an officer sells property without giving notice as required by the Texas Rules of Civil Procedure or sells property in a manner other than that prescribed by this chapter and the Texas Rules of Civil Procedure, the officer forfeits and shall pay to the injured party not less than \$10 nor more than \$200, in addition to any other damages sustained by the party. The amount is recoverable on motion of the party, following five days' notice to the officer and his sureties. (V.A.C.S. Art. 3819.)

Sec. 34.067. **FAILURE TO DELIVER MONEY COLLECTED.** If an officer fails or refuses to deliver money collected under an execution when demanded by the person entitled to receive the money, the officer and his sureties are liable to the person for the amount collected and for damages at a rate of five percent a month on that amount, plus interest and costs. The total amount is recoverable on motion of the person entitled to the money filed with the court that issued the writ, following five days' notice to the officer and his sureties. (V.A.C.S. Art. 3824 (part).)

#### CHAPTER 35. ENFORCEMENT OF JUDGMENTS OF OTHER STATES

Sec. 35.001. **DEFINITION**

Sec. 35.002. **SHORT TITLE**

Sec. 35.003. **FILING AND STATUS OF FOREIGN JUDGMENTS**

Sec. 35.004. **AFFIDAVIT; NOTICE OF FILING**

Sec. 35.005. **ALTERNATE NOTICE OF FILING--JUDGMENT CREDITOR**

Sec. 35.006. STAY

Sec. 35.007. FEES

Sec. 35.008. OPTIONAL PROCEDURE

## CHAPTER 35. ENFORCEMENT OF JUDGMENTS OF OTHER STATES

Sec. 35.001. DEFINITION. In this chapter, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state. (V.A.C.S. Art. 2328b-5, Sec. 1.)

Sec. 35.002. SHORT TITLE. This chapter may be cited as the Uniform Enforcement of Foreign Judgments Act. (V.A.C.S. Art. 2328b-5, Sec. 8.)

Sec. 35.003. FILING AND STATUS OF FOREIGN JUDGMENTS. (a) A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

(b) The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.

(c) A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed. (V.A.C.S. Art. 2328b-5, Sec. 2.)

Sec. 35.004. AFFIDAVIT; NOTICE OF FILING. (a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.

(b) The clerk shall promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall note the mailing in the docket.

(c) The notice must include the name and post office address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address. (V.A.C.S. Art. 2328b-5, Secs. 3(a), (b) (part).)

Sec. 35.005. ALTERNATE NOTICE OF FILING--JUDGMENT CREDITOR. (a) The judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk.

(b) A clerk's lack of mailing the notice of filing does not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. (V.A.C.S. Art. 2328b-5, Sec. 3(b) (part).)

Sec. 35.006. STAY. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted and proves that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for satisfaction of the judgment that is required in this state. (V.A.C.S. Art. 2328b-5, Sec. 4.)

Sec. 35.007. FEES. (a) A person filing a foreign judgment shall pay to the clerk of the court the amount as otherwise provided by law for filing suit in the courts of this state.

(b) Filing fees are due and payable at the time of filing.

(c) Fees for other enforcement proceedings are as provided by law for judgments of the courts of this state. (V.A.C.S. Art. 2328b-5, Sec. 5.)

Sec. 35.008. OPTIONAL PROCEDURE. A judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this chapter. (V.A.C.S. Art. 2328b-5, Sec. 6.)

## CHAPTER 36. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES

Sec. 36.001. DEFINITIONS

Sec. 36.002. APPLICABILITY

Sec. 36.003. SHORT TITLE

Sec. 36.004. RECOGNITION AND ENFORCEMENT

Sec. 36.005. GROUNDS FOR NONRECOGNITION

## Sec. 36.006. PERSONAL JURISDICTION

## Sec. 36.007. STAY IN CASE OF APPEAL

## Sec. 36.008. OTHER FOREIGN COUNTRY JUDGMENTS

## CHAPTER 36. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES

## Sec. 36.001. DEFINITIONS. In this chapter:

(1) "Foreign country" means a governmental unit other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States;

(C) the Panama Canal Zone; or

(D) the Trust Territory of the Pacific Islands.

(2) "Foreign country judgment" means a judgment of a foreign country granting or denying a sum of money other than a judgment for:

(A) taxes, a fine, or other penalty; or

(B) support in a matrimonial or family matter. (V.A.C.S. Art. 2328b-6, Sec. 2.)

## Sec. 36.002. APPLICABILITY. (a) This chapter applies to a foreign country judgment:

(1) that is final and conclusive and enforceable where rendered, even though an appeal is pending or the judgment is subject to appeal; or

(2) that is in favor of the defendant on the merits of the cause of action and is final and conclusive where rendered, even though an appeal is pending or the judgment is subject to appeal.

(b) This chapter does not apply to a judgment rendered before June 17, 1981. (V.A.C.S. Art. 2328b-6, Secs. 3, 10.)

## Sec. 36.003. SHORT TITLE. This chapter may be cited as the Uniform Foreign Country Money-Judgment Recognition Act. (V.A.C.S. Art. 2328b-6, Sec. 1.)

Sec. 36.004. RECOGNITION AND ENFORCEMENT. Except as provided by Section 36.005, a foreign country judgment meeting the requirements of Section 36.002 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit. (V.A.C.S. Art. 2328b-6, Sec. 4.)

## Sec. 36.005. GROUNDS FOR NONRECOGNITION. (a) A foreign country judgment is not conclusive if:

(1) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign country court did not have personal jurisdiction over the defendant; or

(3) the foreign country court did not have jurisdiction over the subject matter.

(b) A foreign country judgment need not be recognized if:

(1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend;

(2) the judgment was obtained by fraud;

(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or

(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of "foreign country judgment." (V.A.C.S. Art. 2328b-6, Sec. 5.)

## Sec. 36.006. PERSONAL JURISDICTION. (a) A court may not refuse to recognize a foreign country judgment for lack of personal jurisdiction if:

(1) the defendant was served personally in the foreign country;

(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceedings were instituted or, if the defendant is a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign country;

(5) the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of operation of the motor vehicle or airplane.

(b) A court of this state may recognize other bases of jurisdiction. (V.A.C.S. Art. 2328b-6, Sec. 6.)

Sec. 36.007. **STAY IN CASE OF APPEAL.** If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until a period of time sufficient to enable the defendant to prosecute the appeal has expired. (V.A.C.S. Art. 2328b-6, Sec. 7.)

Sec. 36.008. **OTHER FOREIGN COUNTRY JUDGMENTS.** This chapter does not prevent the recognition of a foreign country judgment in a situation not covered by this chapter. (V.A.C.S. Art. 2328b-6, Sec. 8.)

## CHAPTER 37. DECLARATORY JUDGMENTS

Sec. 37.001. **DEFINITION**

Sec. 37.002. **SHORT TITLE, CONSTRUCTION, INTERPRETATION**

Sec. 37.003. **POWER OF COURTS TO RENDER JUDGMENT; FORM AND EFFECT**

Sec. 37.004. **SUBJECT MATTER OF RELIEF**

Sec. 37.005. **DECLARATIONS RELATING TO TRUST OR ESTATE**

Sec. 37.006. **PARTIES**

Sec. 37.007. **JURY TRIAL**

Sec. 37.008. **COURT REFUSAL TO RENDER**

Sec. 37.009. **COSTS**

Sec. 37.010. **REVIEW**

Sec. 37.011. **SUPPLEMENTAL RELIEF**

## CHAPTER 37. DECLARATORY JUDGMENTS

Sec. 37.001. **DEFINITION.** In this chapter, "person" means an individual, partnership, joint-stock company, unincorporated association or society, or municipal or other corporation of any character. (V.A.C.S. Art. 2524-1, Sec. 13.)

Sec. 37.002. **SHORT TITLE, CONSTRUCTION, INTERPRETATION.** (a) This chapter may be cited as the Uniform Declaratory Judgments Act.

(b) This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

(c) This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees. (V.A.C.S. Art. 2524-1, Secs. 12, 15, 16.)

Sec. 37.003. **POWER OF COURTS TO RENDER JUDGMENT; FORM AND EFFECT.** (a) A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for.

(b) The declaration may be either affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree.

(c) The enumerations in Sections 37.004 and 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty. (V.A.C.S. Art. 2524-1, Secs. 1, 5.)

Sec. 37.004. **SUBJECT MATTER OF RELIEF.** (a) A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(b) A contract may be construed either before or after there has been a breach. (V.A.C.S. Art. 2524-1, Secs. 2, 3.)

Sec. 37.005. **DECLARATIONS RELATING TO TRUST OR ESTATE.** A person interested as or through an executor, administrator, trustee, guardian, other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, lunatic, or insolvent may have a declaration of rights or legal relations in respect to the trust or estate:

(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the trust or estate, including questions of construction of wills and other writings. (V.A.C.S. Art. 2524-1, Sec. 4.)

Sec. 37.006. **PARTIES.** (a) When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties. A declaration does not prejudice the rights of a person not a party to the proceeding.

(b) In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard. (V.A.C.S. Art. 2524-1, Sec. 11.)

Sec. 37.007. **JURY TRIAL.** If a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. (V.A.C.S. Art. 2524-1, Sec. 9.)

Sec. 37.008. **COURT REFUSAL TO RENDER.** The court may refuse to render or enter a declaratory judgment or decree if the judgment or decree would not terminate the uncertainty or controversy giving rise to the proceeding. (V.A.C.S. Art. 2524-1, Sec. 6.)

Sec. 37.009. **COSTS.** In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just. (V.A.C.S. Art. 2524-1, Sec. 10.)

Sec. 37.010. **REVIEW.** All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees. (V.A.C.S. Art. 2524-1, Sec. 7.)

Sec. 37.011. **SUPPLEMENTAL RELIEF.** Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application must be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith. (V.A.C.S. Art. 2524-1, Sec. 8.)

## CHAPTER 38. ATTORNEY'S FEES

Sec. 38.001. **RECOVERY OF ATTORNEY'S FEES**

Sec. 38.002. **PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES**

Sec. 38.003. **PRESUMPTION**

Sec. 38.004. **JUDICIAL NOTICE**

Sec. 38.005. **LIBERAL CONSTRUCTION**

Sec. 38.006. **EXCEPTIONS**

## CHAPTER 38. ATTORNEY'S FEES

Sec. 38.001. **RECOVERY OF ATTORNEY'S FEES.** A person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for:

- (1) rendered services;
- (2) performed labor;
- (3) furnished material;
- (4) freight or express overcharges;

- (5) lost or damaged freight or express;
- (6) killed or injured stock;
- (7) a sworn account; or
- (8) an oral or written contract. (V.A.C.S. Art. 2226 (part).)

Sec. 38.002. **PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES.** To recover attorney's fees under this chapter:

- (1) the claimant must be represented by an attorney;
- (2) the claimant must present the claim to the opposing party or to a duly authorized agent of the opposing party; and
- (3) payment for the just amount owed must not have been tendered before the expiration of the 30th day after the claim is presented. (V.A.C.S. Art. 2226 (part).)

Sec. 38.003. **PRESUMPTION.** It is presumed that the usual and customary attorney's fees for a claim of the type described in Section 38.001 are reasonable. The presumption may be rebutted. (V.A.C.S. Art. 2226 (part).)

Sec. 38.004. **JUDICIAL NOTICE.** The court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in:

- (1) a proceeding before the court; or
- (2) a jury case in which the amount of attorney's fees is submitted to the court by agreement. (V.A.C.S. Art. 2226 (part).)

Sec. 38.005. **LIBERAL CONSTRUCTION.** This chapter shall be liberally construed to promote its underlying purposes. (V.A.C.S. Art. 2226 (part).)

Sec. 38.006. **EXCEPTIONS.** This chapter does not apply to a contract issued by an insurer that is subject to the provisions of:

- (1) Article 3.62, Insurance Code;
- (2) Section 1, Chapter 387, Acts of the 55th Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas Insurance Code);
- (3) Chapter 9, Insurance Code;
- (4) Article 21.21, Insurance Code; or
- (5) the Unfair Claim Settlement Practices Act (Article 21.21-2, Insurance Code). (V.A.C.S. Art. 2226 (part).)

[Chapters 39-50 reserved for expansion]

## SUBTITLE D. APPEALS

### CHAPTER 51. APPEALS

#### SUBCHAPTER A. APPEALS FROM JUSTICE COURT

Sec. 51.001. **APPEAL FROM JUSTICE COURT TO COUNTY OR DISTRICT COURT**

Sec. 51.002. **CERTIORARI FROM JUSTICE COURT**

[Sections 51.003-51.010 reserved for expansion]

#### SUBCHAPTER B. APPEALS FROM COUNTY OR DISTRICT COURT

Sec. 51.011. **APPEAL FROM COUNTY OR DISTRICT COURT AFTER CERTIORARI FROM JUSTICE COURT**

Sec. 51.012. **APPEAL OR WRIT OF ERROR TO COURT OF APPEALS**

Sec. 51.013. **TIME FOR TAKING WRIT OF ERROR TO COURT OF APPEALS**

Sec. 51.014. **APPEAL FROM INTERLOCUTORY ORDER**

## SUBTITLE D. APPEALS

### CHAPTER 51. APPEALS

#### SUBCHAPTER A. APPEALS FROM JUSTICE COURT

Sec. 51.001. **APPEAL FROM JUSTICE COURT TO COUNTY OR DISTRICT COURT.** (a) In a case tried in justice court in which the judgment or amount in controversy exceeds \$20, exclusive of costs, or in which the appeal is expressly provided by law, a party to a final judgment may appeal to the county court.

(b) In a county in which the civil jurisdiction of the county court has been transferred to the district court, a party to a final judgment in a case covered by this section may appeal to the district court. (V.A.C.S. Arts. 2454, 2455 (part), 2455-1 (part).)

Sec. 51.002. CERTIORARI FROM JUSTICE COURT. (a) After final judgment in a case tried in justice court in which the judgment or amount in controversy exceeds \$20, exclusive of costs, a person may remove the case from the justice court to the county court by writ of certiorari.

(b) In a county in which the civil jurisdiction of the county court has been transferred from the county court to the district court, a person may remove a case covered by this section from the justice court to the district court by writ of certiorari.

(c) If a writ of certiorari to remove a case is served on a justice of the peace, the justice shall immediately make a certified copy of the entries made on his docket and of the bill of costs, as provided in cases of appeals, and shall immediately send them and the original papers in the case to the clerk of the county or district court, as appropriate.

(d) This section does not apply to a case of forcible entry and detainer. (V.A.C.S. Arts. 941, 2455 (part), 2455-1 (part), 2460.)

[Sections 51.003-51.010 reserved for expansion]

**SUBCHAPTER B. APPEALS FROM COUNTY OR DISTRICT COURT**

Sec. 51.011. APPEAL FROM COUNTY OR DISTRICT COURT AFTER CERTIORARI FROM JUSTICE COURT. If a county or district court hears a case on certiorari from a justice court, a person may take an appeal or writ of error from the judgment of the county or district court. The appeal or writ of error is subject to the rules that apply in a case appealed from a justice court. (V.A.C.S. Art. 960.)

Sec. 51.012. APPEAL OR WRIT OF ERROR TO COURT OF APPEALS. In a civil case in which the judgment or amount in controversy exceeds \$100, exclusive of interest and costs, a person may take an appeal or writ of error to the court of appeals from a final judgment of the district or county court. (V.A.C.S. Art. 2249.)

Sec. 51.013. TIME FOR TAKING WRIT OF ERROR TO COURT OF APPEALS. In a case in which a writ of error to the court of appeals is allowed, the writ of error may be taken at any time within six months after the date the final judgment is rendered. (V.A.C.S. Art. 2255.)

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER. A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure; or
- (4) grants or refuses or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65. (V.A.C.S. Arts. 2250, 2251, 4662.)

[Chapters 52-60 reserved for expansion]

**TITLE 3. EXTRAORDINARY REMEDIES**

**CHAPTER 61. ATTACHMENT**

**SUBCHAPTER A. AVAILABILITY OF REMEDY**

Sec. 61.001. GENERAL GROUNDS

Sec. 61.002. SPECIFIC GROUNDS

Sec. 61.003. PENDING SUIT REQUIRED

Sec. 61.004. AVAILABLE FOR DEBT NOT DUE

Sec. 61.005. CERTAIN TORTS AND UNLIQUIDATED DEMANDS

[Sections 61.006-61.020 reserved for expansion]

**SUBCHAPTER B. ISSUANCE**

Sec. 61.021. WHO MAY ISSUE

Sec. 61.022. AFFIDAVIT

Sec. 61.023. BOND

[Sections 61.024-61.040 reserved for expansion]

**SUBCHAPTER C. LEVY**

Sec. 61.041. SUBJECT PROPERTY

Sec. 61.042. ATTACHMENT OF PERSONALTY

Sec. 61.043. ATTACHMENT OF REALTY

Sec. 61.044. CLAIM ON ATTACHED PERSONALTY BY THIRD PARTY

[Sections 61.045-61.060 reserved for expansion]

#### SUBCHAPTER D. LIEN

Sec. 61.061. ATTACHMENT LIEN

Sec. 61.062. JUDGMENT AND FORECLOSURE

Sec. 61.063. JUDGMENT ON REPLEVIED PROPERTY

### TITLE 3. EXTRAORDINARY REMEDIES

#### CHAPTER 61. ATTACHMENT

##### SUBCHAPTER A. AVAILABILITY OF REMEDY

Sec. 61.001. GENERAL GROUNDS. A writ of original attachment is available to a plaintiff in a suit if:

- (1) the defendant is justly indebted to the plaintiff;
- (2) the attachment is not sought for the purpose of injuring or harassing the defendant;
- (3) the plaintiff will probably lose his debt unless the writ of attachment is issued; and
- (4) specific grounds for the writ exist under Section 61.002. (V.A.C.S. Arts. 275 (part), 276.)

Sec. 61.002. SPECIFIC GROUNDS. Attachment is available if:

- (1) the defendant is not a resident of this state or is a foreign corporation or is acting as such;
- (2) the defendant is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff;
- (3) the defendant is in hiding so that ordinary process of law cannot be served on him;
- (4) the defendant has hidden or is about to hide his property for the purpose of defrauding his creditors;
- (5) the defendant is about to remove his property from this state without leaving an amount sufficient to pay his debts;
- (6) the defendant is about to remove all or part of his property from the county in which the suit is brought with the intent to defraud his creditors;
- (7) the defendant has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;
- (8) the defendant is about to convert all or part of his property into money for the purpose of placing it beyond the reach of his creditors; or
- (9) the defendant owes the plaintiff for property obtained by the defendant under false pretenses. (V.A.C.S. Art. 275 (part).)

Sec. 61.003. PENDING SUIT REQUIRED. A writ of attachment may be issued in a proper case at the initiation of a suit or at any time during the progress of a suit, but may not be issued before a suit has been instituted. (V.A.C.S. Art. 277.)

Sec. 61.004. AVAILABLE FOR DEBT NOT DUE. A writ of attachment may be issued even though the plaintiff's debt or demand is not due. The proceedings relating to the writ shall be as in other cases, except that final judgment may not be rendered against the defendant until the debt or demand becomes due. (V.A.C.S. Art. 278.)

Sec. 61.005. CERTAIN TORTS AND UNLIQUIDATED DEMANDS. Nothing in this chapter prevents issuance of a writ of attachment in a suit founded in tort or on an unliquidated demand against an individual, partnership, association, or corporation on whom personal service cannot be obtained in this state. (V.A.C.S. Art. 281 (part).)

[Sections 61.006-61.020 reserved for expansion]

##### SUBCHAPTER B. ISSUANCE

Sec. 61.021. WHO MAY ISSUE. The judge or clerk of a district or county court or a justice of the peace may issue a writ of original attachment returnable to his court. (V.A.C.S. Art. 275 (part).)

Sec. 61.022. AFFIDAVIT. (a) To apply for a writ of attachment, a plaintiff or his agent or attorney must file with the court an affidavit that states:

- (1) general grounds for issuance under Sections 61.001(1), (2), and (3);



- (2) the amount of the demand; and
- (3) specific grounds for issuance under Section 61.002.

(b) The affidavit shall be filed with the papers of the case. (V.A.C.S. Arts. 275 (part), 279 (part).)

Sec. 61.023. **BOND.** (a) Before a writ of attachment may be issued, the plaintiff must execute a bond that:

- (1) has two or more good and sufficient sureties;
- (2) is payable to the defendant;
- (3) is in an amount fixed by the judge or justice issuing the writ; and
- (4) is conditioned on the plaintiff prosecuting his suit to effect and paying all damages and costs adjudged against him for wrongful attachment.

(b) The plaintiff shall deliver the bond to the officer issuing the writ for that officer's approval. The bond shall be filed with the papers of the case. (V.A.C.S. Arts. 279 (part), 281 (part).)

[Sections 61.024-61.040 reserved for expansion]

### SUBCHAPTER C. LEVY

Sec. 61.041. **SUBJECT PROPERTY.** A writ of attachment may be levied only on property that by law is subject to levy under a writ of execution. (V.A.C.S. Art. 288.)

Sec. 61.042. **ATTACHMENT OF PERSONALTY.** The officer attaching personal property shall retain possession until final judgment unless the property is:

- (1) replevied;
- (2) sold as provided by law; or
- (3) claimed by a third party who posts bond and tries his right to the property. (V.A.C.S. Art. 290.)

Sec. 61.043. **ATTACHMENT OF REALTY.** (a) To attach real property, the officer levying the writ shall immediately file a copy of the writ and the applicable part of the return with the county clerk of each county in which the property is located.

(b) If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the county clerk of each county in which the property is located. (V.A.C.S. Art. 6662.)

Sec. 61.044. **CLAIM ON ATTACHED PERSONALTY BY THIRD PARTY.** A person other than the defendant may claim attached personal property by making an affidavit and giving bond in the manner provided by law for trial of right of property. (V.A.C.S. Art. 291.)

[Sections 61.045-61.060 reserved for expansion]

### SUBCHAPTER D. LIEN

Sec. 61.061. **ATTACHMENT LIEN.** Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached, on the personal property held by the attaching officer, and on the proceeds of any attached personal property that may have been sold. (V.A.C.S. Art. 300.)

Sec. 61.062. **JUDGMENT AND FORECLOSURE.** (a) If the plaintiff recovers in the suit, the attachment lien is foreclosed as in the case of other liens. The court shall direct proceeds from personal property previously sold to be applied to the satisfaction of the judgment and the sale of personal property remaining in the hands of the officer and of the real property levied on to satisfy the judgment.

(b) If the writ of attachment on real property was issued from a county or justice court, the court is not required to enter an order or decree foreclosing the lien, but to preserve the lien the judgment must briefly recite the issuance and levy of the writ. The land may be sold under execution after judgment, and the sale vests in the purchaser all of the estate of the defendant in the land at the time of the levy. (V.A.C.S. Art. 301.)

Sec. 61.063. **JUDGMENT ON REPLEVIED PROPERTY.** A judgment against a defendant who has replevied attached personal property shall be against the defendant and his sureties on the replevy bond for the amount of the judgment plus interest and costs or for an amount equal to the value of the replevied property plus interest, according to the terms of the replevy bond. (V.A.C.S. Art. 302.)

## CHAPTER 62. SEQUESTRATION

### SUBCHAPTER A. AVAILABILITY OF REMEDY

Sec. 62.001. **GROUND**S

- Sec. 62.002. PENDING SUIT REQUIRED
  - Sec. 62.003. AVAILABLE FOR CLAIM NOT DUE
- [Sections 62.004-62.020 reserved for expansion]

**SUBCHAPTER B. ISSUANCE**

- Sec. 62.021. WHO MAY ISSUE
  - Sec. 62.022. APPLICATION
  - Sec. 62.023. REQUIRED STATEMENT OF RIGHTS
- [Sections 62.024-62.040 reserved for expansion]

**SUBCHAPTER C. DISSOLUTION AND REPLEVY**

- Sec. 62.041. MOTION FOR DISSOLUTION; STAY
  - Sec. 62.042. HEARING ON MOTION
  - Sec. 62.043. DISSOLUTION
  - Sec. 62.044. COMPULSORY COUNTERCLAIM FOR WRONGFUL SEQUESTRATION
  - Sec. 62.045. WRONGFUL SEQUESTRATION OF CONSUMER GOODS
  - Sec. 62.046. LIABILITY FOR FRUIT OF REPLEVIED PROPERTY
- [Sections 62.047-62.060 reserved for expansion]

**SUBCHAPTER D. CARE AND MANAGEMENT OF SEQUESTERED PROPERTY**

- Sec. 62.061. OFFICER'S LIABILITY AND DUTY OF CARE
- Sec. 62.062. COMPENSATION OF OFFICER
- Sec. 62.063. INDEMNIFICATION OF OFFICER FOR MONEY SPENT

**CHAPTER 62. SEQUESTRATION**

**SUBCHAPTER A. AVAILABILITY OF REMEDY**

- Sec. 62.001. **GROUND.** A writ of sequestration is available to a plaintiff in a suit if:
- (1) the suit is for title or possession of personal property or fixtures or for foreclosure or enforcement of a mortgage, lien, or security interest on personal property or fixtures and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will conceal, dispose of, ill-treat, waste, or destroy the property or remove it from the county during the suit;
  - (2) the suit is for title or possession of real property or for foreclosure or enforcement of a mortgage or lien on real property and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property will use his possession to injure or ill-treat the property or waste or convert to his own use the timber, rents, fruits, or revenue of the property;
  - (3) the suit is for the title or possession of property from which the plaintiff has been ejected by force or violence; or
  - (4) the suit is to try the title to real property, to remove a cloud from the title of real property, to foreclose a lien on real property, or to partition real property and the plaintiff makes an oath that one or more of the defendants is a nonresident of this state. (V.A.C.S. Art. 6840, Secs. 1(a) (part), (b), (c), (d), (e).)
- Sec. 62.002. **PENDING SUIT REQUIRED.** A writ of sequestration may be issued at the initiation of a suit or at any time before final judgment. (V.A.C.S. Art. 6840, Sec. 1(a) (part).)
- Sec. 62.003. **AVAILABLE FOR CLAIM NOT DUE.** A writ of sequestration may be issued for personal property under a mortgage or a lien even though the right of action on the mortgage or lien has not accrued. The proceedings relating to the writ shall be as in other cases, except that final judgment may not be rendered against the defendant until the right of action has accrued. (V.A.C.S. Art. 6844.)

[Sections 62.004-62.020 reserved for expansion]

### SUBCHAPTER B. ISSUANCE

Sec. 62.021. **WHO MAY ISSUE.** A district or county court judge or a justice of the peace may issue writs of sequestration returnable to his court. (V.A.C.S. Art. 6840, Sec. 1(a) (part).)

Sec. 62.022. **APPLICATION.** The application for a writ of sequestration must be made under oath and must set forth:

- (1) the specific facts stating the nature of the plaintiff's claim;
- (2) the amount in controversy, if any; and
- (3) the facts justifying issuance of the writ. (V.A.C.S. Art. 6840, Sec. 2.)

Sec. 62.023. **REQUIRED STATEMENT OF RIGHTS.** (a) A writ of sequestration must prominently display the following statement on the face of the writ:

**YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.**

(b) The statement must be printed in 10-point type and in a manner intended to advise a reasonably attentive person of its contents. (V.A.C.S. Art. 6840, Sec. 4.)

[Sections 62.024-62.040 reserved for expansion]

### SUBCHAPTER C. DISSOLUTION AND REPLEVY

Sec. 62.041. **MOTION FOR DISSOLUTION; STAY.** (a) The defendant may seek dissolution of an issued writ of sequestration by filing a written motion with the court.

(b) The right to seek dissolution is cumulative of the right of replevy.

(c) The filing of a motion to dissolve stays proceedings under the writ until the issue is determined. (V.A.C.S. Art. 6840, Secs. 3(a), (e).)

Sec. 62.042. **HEARING ON MOTION.** Unless the parties agree to an extension, the court shall conduct a hearing on the motion and determine the issue not later than the 10th day after the motion is filed. (V.A.C.S. Art. 6840, Sec. 3(b) (part).)

Sec. 62.043. **DISSOLUTION.** (a) Following the hearing, the writ must be dissolved unless the party who secured its issuance proves the specific facts alleged and the grounds relied on for issuance.

(b) If the writ is dissolved, the action proceeds as if the writ had not been issued. (V.A.C.S. Art. 6840, Secs. 3(b) (part), (c) (part).)

Sec. 62.044. **COMPULSORY COUNTERCLAIM FOR WRONGFUL SEQUESTRATION.** (a) If a writ is dissolved, any action for damages for wrongful sequestration must be brought as a compulsory counterclaim.

(b) In addition to damages, the party who sought dissolution of the writ may recover reasonable attorney's fees incurred in dissolution of the writ. (V.A.C.S. Art. 6840, Sec. 3(c) (part).)

Sec. 62.045. **WRONGFUL SEQUESTRATION OF CONSUMER GOODS.** (a) If a writ that sought to sequester consumer goods is dissolved, the defendant or party in possession of the goods is entitled to reasonable attorney's fees and damages equal to the greater of:

- (1) \$100;
- (2) the finance charge contracted for; or
- (3) actual damages.

(b) Damages may not be awarded for the failure of the plaintiff to prove by a preponderance of the evidence the specific facts alleged if the failure is the result of a bona fide error. For a bona fide error to be available as a defense, the plaintiff must prove the use of reasonable procedures to avoid the error.

(c) In this section, "consumer goods" has the meaning assigned by the Business & Commerce Code. (V.A.C.S. Art. 6840, Sec. 3(d).)

Sec. 62.046. **LIABILITY FOR FRUIT OF REPLEVIED PROPERTY.** (a) In a suit for enforcement of a mortgage or lien on property, a defendant who replevies the property is not required to account for the fruits, hire, revenue, or rent of the property.

(b) This section does not apply to a plaintiff who replevies the property. (V.A.C.S. Art. 6858.)

[Sections 62.047-62.060 reserved for expansion]

## SUBCHAPTER D. CARE AND MANAGEMENT OF SEQUESTERED PROPERTY

Sec. 62.061. **OFFICER'S LIABILITY AND DUTY OF CARE.** (a) An officer who executes a writ of sequestration shall care for and manage in a prudent manner the sequestered property he retains in custody.

(b) If the officer entrusts sequestered property to another person, the officer is responsible for the acts of that person relating to the property.

(c) The officer is liable for injuries to the sequestered property resulting from his neglect or mismanagement or from the neglect or mismanagement of a person to whom he entrusts the property. (V.A.C.S. Art. 6846.)

Sec. 62.062. **COMPENSATION OF OFFICER.** (a) An officer who retains custody of sequestered property is entitled to just compensation and reasonable charges to be determined by the court that issued the writ.

(b) The officer's compensation and charges shall be taxed and collected as a cost of suit. (V.A.C.S. Art. 6847.)

Sec. 62.063. **INDEMNIFICATION OF OFFICER FOR MONEY SPENT.** If an officer is required to expend money in the security, management, or care of sequestered property, he may retain possession of the property until the money is repaid by the party seeking to replevy the property or by that party's agent or attorney. (V.A.C.S. Art. 6848.)

## CHAPTER 63. GARNISHMENT

Sec. 63.001. **GROUNDS**

Sec. 63.002. **WHO MAY ISSUE**

Sec. 63.003. **EFFECT OF SERVICE**

Sec. 63.004. **CURRENT WAGES EXEMPT**

Sec. 63.005. **PLACE FOR TRIAL**

## CHAPTER 63. GARNISHMENT

Sec. 63.001. **GROUNDS.** A writ of garnishment is available if:

(1) an original attachment has been issued;

(2) a plaintiff sues for a debt and makes an affidavit stating that:

(A) the debt is just, due, and unpaid;

(B) within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and

(C) the garnishment is not sought to injure the defendant or the garnishee; or

(3) a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment. (V.A.C.S. Art. 4076 (part).)

Sec. 63.002. **WHO MAY ISSUE.** The clerk of a district or county court or a justice of the peace may issue a writ of garnishment returnable to his court. (V.A.C.S. Art. 4076 (part).)

Sec. 63.003. **EFFECT OF SERVICE.** (a) After service of a writ of garnishment, the garnishee may not deliver any effects or pay any debt to the defendant. If the garnishee is a corporation or joint-stock company, the garnishee may not permit or recognize a sale or transfer of shares or an interest alleged to be owned by the defendant.

(b) A payment, delivery, sale, or transfer made in violation of Subsection (a) is void as to the amount of the debt, effects, shares, or interest necessary to satisfy the plaintiff's demand. (V.A.C.S. Art. 4084 (part).)

Sec. 63.004. **CURRENT WAGES EXEMPT.** Current wages for personal service are not subject to garnishment. The garnishee shall be discharged from the garnishment as to any debt to the defendant for current wages. (V.A.C.S. Art. 4099.)

Sec. 63.005. **PLACE FOR TRIAL.** (a) If a garnishee other than a foreign corporation is not a resident of the county in which the original suit is pending or was tried and a party to the suit files an affidavit controverting the garnishee's answer, the issues raised by the answer and controverting affidavit shall be tried in the county in which the garnishee resides. The issues may be tried in a court of that county that has jurisdiction of the amount of the original judgment if the plaintiff files with the court a certified copy of the judgment in the original suit and a certified copy of the proceedings in garnishment, including the plaintiff's application for the writ, the garnishee's answer, and the controverting affidavit.

(b) If a garnishee whose answer is controverted is a foreign corporation, the issues raised by the answer and controverting affidavit shall be tried in the court in which the original suit pending or was tried. (V.A.C.S. Art. 4096.)

## CHAPTER 64. RECEIVERSHIP

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. AVAILABILITY OF REMEDY

Sec. 64.002. PERSONS NOT ENTITLED TO APPOINTMENT

Sec. 64.003. FOREIGN APPOINTMENT

Sec. 64.004. APPLICATION OF EQUITY RULES

[Sections 64.005-64.020 reserved for expansion]

### SUBCHAPTER B. QUALIFICATIONS, OATH, AND BOND

Sec. 64.021. QUALIFICATIONS; RESIDENCE REQUIREMENT

Sec. 64.022. OATH

Sec. 64.023. BOND

[Sections 64.024-64.030 reserved for expansion]

### SUBCHAPTER C. POWERS AND DUTIES

Sec. 64.031. GENERAL POWERS AND DUTIES

Sec. 64.032. INVENTORY

Sec. 64.033. SUITS BY RECEIVER

Sec. 64.034. INVESTMENT OF FUNDS

Sec. 64.035. DEPOSIT OF CERTAIN RAILROAD FUNDS

[Sections 64.036-64.050 reserved for expansion]

### SUBCHAPTER D. CLAIMS AND LIABILITIES

Sec. 64.051. APPLICATION OF FUNDS; PREFERENCES

Sec. 64.052. SUITS AGAINST RECEIVER

Sec. 64.053. PAYMENT OF JUDGMENT AGAINST RECEIVER

Sec. 64.054. JUDGMENT LIEN

Sec. 64.055. EXECUTION ON JUDGMENT

Sec. 64.056. LIABILITY OF PERSONS RECEIVING RECEIVERSHIP PROPERTY

[Sections 64.057-64.070 reserved for expansion]

### SUBCHAPTER E. PROVISIONS RELATING TO RECEIVERSHIP OF CORPORATIONS

Sec. 64.071. VENUE FOR APPOINTMENT

Sec. 64.072. LIMITED DURATION

Sec. 64.073. EARNINGS ON IMPROVED PROPERTY LIABLE FOR DEBTS

Sec. 64.074. CLAIMS PREFERENCE AGAINST CURRENT EARNINGS

Sec. 64.075. FORFEITURE OF CHARTER FOR UNQUALIFIED RECEIVER

Sec. 64.076. SUITS AGAINST RAILROAD RECEIVER: VENUE AND SERVICE

[Sections 64.077-64.090 reserved for expansion]

### SUBCHAPTER F. RECEIVER FOR CERTAIN MINERAL INTERESTS

Sec. 64.091. RECEIVER FOR MINERAL INTERESTS OWNED BY NONRESIDENT OR ABSENTEE

Sec. 64.092. RECEIVER FOR CONTINGENT INTERESTS IN MINERALS

CHAPTER 64. RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. AVAILABILITY OF REMEDY. (a) A court of competent jurisdiction may appoint a receiver:

- (1) in an action by a vendor to vacate a fraudulent purchase of property;
- (2) in an action by a creditor to subject any property or fund to his claim;
- (3) in an action between partners or others jointly owning or interested in any property or fund;
- (4) in an action by a mortgagee for the foreclosure of the mortgage and sale of the mortgaged property;
- (5) for a corporation that is insolvent, is in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights; or
- (6) in any other case in which a receiver may be appointed under the rules of equity.

(b) Under Subsection (a)(1), (2), or (3), the receiver may be appointed on the application of the plaintiff in the action or another party. The party must have a probable interest in or right to the property or fund, and the property or fund must be in danger of being lost, removed, or materially injured.

(c) Under Subsection (a)(4), the court may appoint a receiver only if:

- (1) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or
- (2) the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt. (V.A.C.S. Art. 2293.)

Sec. 64.002. PERSONS NOT ENTITLED TO APPOINTMENT. (a) A court may not appoint a receiver for a corporation, partnership, or individual on the petition of the same corporation, partnership, or individual.

(b) A court may appoint a receiver for a corporation on the petition of one or more stockholders of the corporation.

(c) This section does not prohibit appointment of a receiver for a partnership in an action arising between partners. (V.A.C.S. Art. 2318.)

Sec. 64.003. FOREIGN APPOINTMENT. A court outside this state may not appoint a receiver for:

- (1) a person who resides in this state and for whom appointment of a receiver has been applied for in this state; or
- (2) property located in this state. (V.A.C.S. Art. 2313.)

Sec. 64.004. APPLICATION OF EQUITY RULES. Unless inconsistent with this chapter or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver. (V.A.C.S. Art. 2319.)

[Sections 64.005-64.020 reserved for expansion]

SUBCHAPTER B. QUALIFICATIONS, OATH, AND BOND

Sec. 64.021. QUALIFICATIONS; RESIDENCE REQUIREMENT. (a) To be appointed as a receiver for property that is located entirely or partly in this state, a person must:

- (1) be a citizen and qualified voter of this state at the time of appointment; and
- (2) not be a party, attorney, or other person interested in the action for appointment of a receiver.

(b) The appointment of a receiver who is disqualified under Subsection (a)(1) is void as to property in this state.

(c) A receiver must maintain actual residence in this state during the receivership. (V.A.C.S. Art. 2294.)

Sec. 64.022. OATH. Before a person assumes the duties of a receiver, he must be sworn to perform the duties faithfully. (V.A.C.S. Art. 2296 (part).)

Sec. 64.023. BOND. Before a person assumes the duties of a receiver, he must execute a good and sufficient bond that is:

- (1) approved by the appointing court;
- (2) in an amount fixed by the court; and
- (3) conditioned on faithful discharge of his duties as receiver in the named action and obedience to the orders of the court. (V.A.C.S. Art. 2296 (part).)

[Sections 64.024-64.030 reserved for expansion]

### SUBCHAPTER C. POWERS AND DUTIES

Sec. 64.031. **GENERAL POWERS AND DUTIES.** Subject to the control of the court, a receiver may:

- (1) take charge and keep possession of the property;
- (2) receive rents;
- (3) collect and compromise demands;
- (4) make transfers; and
- (5) perform other acts in regard to the property as authorized by the court. (V.A.C.S. Art. 2297.)

Sec. 64.032. **INVENTORY.** As soon as possible after appointment, a receiver shall return to the appointing court an inventory of all property received. (V.A.C.S. Art. 2314.)

Sec. 64.033. **SUITS BY RECEIVER.** A receiver may bring suits in his official capacity without permission of the appointing court. (V.A.C.S. Art. 2310 (part).)

Sec. 64.034. **INVESTMENT OF FUNDS.** On an order of the court to which all parties consent, a receiver may invest for interest any funds that he holds. (V.A.C.S. Art. 2298.)

Sec. 64.035. **DEPOSIT OF CERTAIN RAILROAD FUNDS.** If a receiver operates a railroad that lies wholly within this state, the receiver shall deposit all money that comes into his hands, from operation of the railroad or otherwise, in a place in this state directed by the court. The money shall remain on deposit until properly disbursed. If any portion of the railroad lies in another state, the court shall require the receiver to deposit in this state a share of the funds that is at least proportionate to the value of the property of the company in this state. (V.A.C.S. Art. 2309.)

[Sections 64.036-64.050 reserved for expansion]

### SUBCHAPTER D. CLAIMS AND LIABILITIES

Sec. 64.051. **APPLICATION OF FUNDS; PREFERENCES.** (a) A receiver shall apply the earnings of property held in receivership to the payment of the following claims in the order listed:

- (1) court costs of suit;
- (2) wages of employees due by the receiver;
- (3) debts owed for materials and supplies purchased by the receiver for the improvement of the property held as receiver;
- (4) debts due for improvements made during the receivership to the property held a receiver;
- (5) claims and accounts against the receiver on contracts made by the receiver, personal injury claims and claims for stock against the receiver accruing during the receivership, and judgments rendered against the receiver for personal injuries and for stock killed; and
- (6) judgments recovered in suits brought before the receiver was appointed.

(b) Claims listed in this section have a preference lien on the earnings of the property held by the receiver.

(c) The court shall ensure that the earnings are paid in the order of preference listed in this section. (V.A.C.S. Art. 2299.)

Sec. 64.052. **SUITS AGAINST RECEIVER.** (a) A receiver who holds property in this state may be sued in his official capacity in a court of competent jurisdiction without permission of the appointing court.

(b) A suit against a receiver may be brought where the person whose property is in receivership resides.

(c) In a suit against a receiver, citation may be served on the receiver or on any agent of the receiver who resides in the county in which the suit is brought.

(d) The discharge of a receiver does not abate a suit against the receiver or affect the right of party to sue the receiver. (V.A.C.S. Arts. 2300 (part), 2304, 2310 (part), 2311 (part).)

Sec. 64.053. **PAYMENT OF JUDGMENT AGAINST RECEIVER.** The court that appointed a receiver shall order any judgment against the receiver to be paid from funds held by the receiver. (V.A.C.S. Art. 2310 (part).)

Sec. 64.054. **JUDGMENT LIEN.** A judgment rendered against a receiver in a cause of action arising during the receivership is a lien on all property held by the receiver. The lien is superior to the mortgage lien of a mortgagee who instituted the receivership. (V.A.C.S. Art. 230 (part).)

Sec. 64.055. **EXECUTION ON JUDGMENT.** (a) To obtain payment on a judgment against a receiver, the owner of the judgment may apply to the court that appointed the receiver for an order that the receiver pay the judgment. If the receiver possesses money that is subject to payment of the judgment, but the court refuses to order payment, the owner of the judgment may apply to the court that issued the judgment for execution on the judgment.

(b) The owner of the judgment must file with the court that issued the judgment an affidavit reciting that:

- (1) he applied to the court that appointed the receiver for an order of payment;
- (2) it was shown to the appointing court that the receiver had money subject to payment of the judgment at that time; and
- (3) the appointing court refused to order the receiver to pay the judgment.

(c) The court that issued the judgment shall issue execution that may be levied on any property held by the receiver. The property shall be sold as under ordinary execution, and the sale of the property conveys title to the purchaser. (V.A.C.S. Art. 2301.)

Sec. 64.056. **LIABILITY OF PERSONS RECEIVING RECEIVERSHIP PROPERTY.** (a) A person to whom a receiver delivers property held in receivership, including the owner of the property, a person who receives it for the owner, or an assignee of the owner is liable to the extent of the value of the property for the liabilities of the receiver arising during the receivership that are unpaid at the time of the receiver's discharge. The person receiving the property may be made a defendant to a suit against the receiver, and if judgment is rendered against the receiver, the court shall also render judgment against that defendant.

(b) A judgment against a receiver or an unpaid claim that arose during the receivership and has not been sued on at the date the receiver is discharged constitutes a preference lien on the property held by the receiver on the date of discharge. The lien is superior to the mortgage lien of a mortgagee who instituted the receivership. The person who received the property is liable on the judgment or claim to the extent of the value of the property. (V.A.C.S. Arts. 2300 (part), 2302 (part), 2303, 2305, 2306, 2307.)

[Sections 64.057-64.070 reserved for expansion]

#### SUBCHAPTER E. PROVISIONS RELATING TO RECEIVERSHIP OF CORPORATIONS

Sec. 64.071. **VENUE FOR APPOINTMENT.** An action to have a receiver appointed for a corporation with property in this state shall be brought in the county in which the principal office of the corporation is located. (V.A.C.S. Art. 2312.)

Sec. 64.072. **LIMITED DURATION.** (a) Except as provided by this section, a court may not administer a corporation in receivership for more than three years after the date the receiver is appointed, and the court shall wind up the affairs of the corporation within that period.

(b) A court may, from time to time, extend the duration of a corporate receivership if:

- (1) litigation prevents the court from winding up the affairs of the corporation within three years; or
- (2) the receiver is operating the corporation as a going concern.

(c) To extend the duration of a corporate receivership, the court must have received an application for the extension and, following notice to all attorneys of record, must conduct a hearing on the extension. As required by the best interests of all concerned parties, the court may prescribe conditions for the extension and extend it for a term within the limits provided by Subsection (d). The court shall enter into its minutes the proper order extending the receivership.

(d) A court may not extend a corporate receivership for more than five years beyond the original three years, except that the court may extend for any additional period the receivership of a corporation organized and existing under Article 3.05(A)(2), Texas Miscellaneous Corporation Laws Act (Article 1302-3.05, Vernon's Texas Civil Statutes), or Title 112, Revised Statutes. (V.A.C.S. Art. 2317.)

Sec. 64.073. **EARNINGS ON IMPROVED PROPERTY LIABLE FOR DEBTS.** (a) A corporation in receivership shall contribute to the payment of any floating debts against it an amount equal to the full value of current earnings spent by the receiver for:

- (1) improvements to the corporate property held by the receiver, the purchase of rolling stock or machinery, and other improvements that increase the value of the property; or
- (2) the extension of a road or the acquisition of land in connection with a road.

(b) If property of a corporation in receivership is sold under court order in a lien foreclosure, the court shall order the clerk to retain from the sale proceeds an amount equal to the value of improvements made by the receiver to the property sold and shall order that money to be paid to persons with a claim, debt, or judgment against the corporation. The courts shall require an amount of cash sufficient for that purpose to be paid in at the date of sale. (V.A.C.S. Art. 2315.)



Sec. 64.074. CLAIMS PREFERENCE AGAINST CURRENT EARNINGS. A judgment or claim existing against a corporation at the time the receiver is appointed or a judgment in an action existing at that time shall be paid out of the earnings of the corporation earned during the receivership in preference to the mortgage of a mortgagee who instituted the receivership. The judgment or claim is a lien on those earnings. (V.A.C.S. Art. 2316.)

Sec. 64.075. FORFEITURE OF CHARTER FOR UNQUALIFIED RECEIVER. If a person who is not a citizen and qualified voter of this state is appointed receiver for a domestic corporation that owns property in this state, the corporation forfeits its charter. The attorney general shall immediately bring suit in the nature of quo warranto for forfeiture of the charter. (V.A.C.S. Art. 2295.)

Sec. 64.076. SUITS AGAINST RAILROAD RECEIVER: VENUE AND SERVICE. An action against the receiver of a railroad company may be brought in any county through or into which the railroad is constructed, and citation may be served on the receiver, the general or division superintendent, or an agent of the receiver who resides in the county in which the suit is brought. If no agent of the receiver resides in the county in which the suit is brought, citation may be served on any agent of the receiver in this state. (V.A.C.S. Arts. 2030, 2311 (part).)

[Sections 64.077-64.090 reserved for expansion]

#### SUBCHAPTER F. RECEIVER FOR CERTAIN MINERAL INTERESTS

Sec. 64.091. RECEIVER FOR MINERAL INTERESTS OWNED BY NONRESIDENT OR ABSENTEE. (a) The purpose of this section is to encourage the exploration and development of mineral resources.

(b) In the following actions, a district court may appoint a receiver for the mineral interest or leasehold interest under a mineral lease owned by a nonresident or absent defendant:

(1) an action that is brought by a person claiming or owning an undivided mineral interest in land in this state or an undivided leasehold interest under a mineral lease of land in this state and that has one or more defendants who have, claim, or own an undivided mineral interest in the same property; or

(2) an action that is brought by a person claiming or owning an undivided leasehold interest under a mineral lease of land in this state and that has one or more defendants who have, claim, or own an undivided leasehold interest under a mineral lease of the same property.

(b) The defendant for whom the receiver is sought must:

(1) be a person whose residence or identity is unknown or a nonresident; and

(2) have not paid taxes on the interest or rendered it for taxes during the five-year period immediately preceding the filing of the action.

(c) The plaintiff in the action must allege by verified petition and prove that he:

(1) has made a diligent but unsuccessful effort to locate the defendant; and

(2) will suffer substantial damage or injury unless the receiver is appointed.

(d) In an action under Subsection (b)(1):

(1) the plaintiff, in the verified petition, must name the last known owner or the last record owner of the interest as defendant;

(2) the court may appoint as receiver the county judge and his successors, the county clerk and his successors, or any other resident of the county in which the land is located; and

(3) the receiver is not required to post bond.

(e) A receivership created under this subchapter continues as long as the defendant or his heirs, assigns, or personal representatives fail to appear in court in person or by agent or attorney to claim the defendant's interest.

(f) As ordered by the court, the receiver shall immediately:

(1) execute and deliver to a lessee or successive lessees mineral leases on the outstanding undivided mineral interests;

(2) execute and deliver to a lessee or successive lessees an assignment of the outstanding undivided leasehold interest; and

(3) enter into a unitization agreement authorized by the Railroad Commission of Texas.

(g) A lease executed by a receiver under this section may authorize the lessee to pool and unitize land subject to the lease with adjacent land into a unit not to exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance or into a unit that substantially conforms to a larger unit prescribed or permitted by governmental rule.

(h) Money consideration paid for the execution of a lease, assignment, or unitization agreement by the receiver must be paid to the clerk of the court in which the case is pending before the receiver executes the instrument. The court shall apply the money to the costs

accruing in the case and retain any balance for the use and benefit of the nonresident or person of unknown residence who owns the mineral or leasehold interest. Payments made at a later time under the lease, assignment, or unitization agreement shall be paid into the registry of the court and impounded for the use and benefit of the owner of the mineral or leasehold interest.

(i) This section is cumulative of other laws relating to removal of a cloud from title or appointment of a receiver.

(j) In this section:

(1) "Mineral lease" includes any lease of oil, gas, or other minerals that contains provisions necessary or incident to the orderly exploration, development, and recovery of oil, gas, or other minerals.

(2) "Leasehold interest" includes ownership created under a mineral lease or carved out of a leasehold estate granted under a mineral lease, including production payments, overriding royalty interests, and working interests.

(3) "Lessee" includes an assignee under an assignment of a mineral lease. (V.A.C.S. Art. 2320b.)

Sec. 64.092. RECEIVER FOR CONTINGENT INTERESTS IN MINERALS. (a) On the application of a person who has a vested, contingent, or possible interest in land or an estate subject to a contingent future interest, a district court of the county in which all or part of the land is located may appoint a receiver for the land or estate, pending the occurrence of the contingency and the vesting of the future interest, if:

(1) the land or estate is susceptible to drainage of oil, gas, or other minerals;

(2) lease of the land for oil, gas, or mineral development and the safe and proper investment of the proceeds will inure to the benefit and advantage of the persons entitled to the proceeds; or

(3) lease of the land for the production of oil, gas, or other minerals is necessary for the conservation, preservation, or protection of the land or estate or of a present, contingent, or future interest in the land or estate.

(b) As authorized or directed by the court, a receiver appointed under Subsection (a) may:

(1) lease the land for the development of oil, gas, or other minerals at public or private sale and on terms and conditions directed by the court; and

(2) receive, hold, and invest the proceeds of the lease for the benefit of persons who are entitled or may become entitled to those proceeds according to their respective rights and interests.

(c) On the application of a person who has a vested, contingent, or possible interest in land or an estate that is under an oil, gas, or mineral lease and is subject to a contingent future interest, a district court of the county in which all or part of the land is located may appoint a receiver for the contingent future interests, pending the occurrence of the contingency and the vesting of the future interest, if:

(1) the lease fails to provide for pooling or contains pooling provisions that are ineffective as to the contingent future interest covered by the lease; and

(2) the pooling of the contingent future interest:

(A) is necessary to protect correlative rights;

(B) is necessary to prevent the physical or economic waste of oil, gas, or other minerals;

(C) will inure to the benefit and advantage of the persons entitled to the future interest; or

(D) is necessary for the conservation, preservation, or protection of the land or estate or of a present, contingent, or future interest in the land or estate.

(d) The lessee or an assignee of the lessee may apply for appointment of a receiver under Subsection (c). As authorized or directed by the court, the receiver appointed under that subsection may:

(1) amend the lease to authorize pooling for the contingent future interest on terms and conditions and for additional consideration directed by the court; and

(2) receive, hold, and invest the additional consideration for the benefit of the persons who are entitled or may become entitled to that consideration, according to their respective rights and interests.

(e) A court appointing a receiver under this section may confer on the receiver all powers necessary to the exercise of the receiver's authority.

(f) A lease executed or amended by a receiver under this section may authorize the lessee and his assigns to pool all or part of the land subject to the lease with adjacent land into a unit not to exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance or into a unit that substantially conforms to a larger unit prescribed or permitted by governmental rule.

(g) In an action for appointment of a receiver under this section, a person who has a vested, contingent, or possible interest in the land must be cited in the manner and for the time provided for in actions concerning title to land. A person not in being must be cited in the manner and for the time provided in actions against unknown owners or claimants of interest in land. In an action brought under Subsection (c), a person is not a necessary party if:

- (1) the person's interest in the land subject to the lease is effectively subject to pooling authority under the lease; and
- (2) enlargement of the pooling authority as to the person's interest is not sought.

(h) The court appointing a receiver under this section may order that, after payment of court costs, money paid to the receiver be deposited in the registry of the court for the use and benefit of the persons who are entitled or may become entitled to the money, according to their respective rights and interests. If the court then discharges the receiver, it may order that later payments under the lease accruing to the contingent future interest be deposited in the same manner and for the same purpose.

(i) This section does not apply to a mineral lease on land on which drilling began before October 5, 1949. This section does not authorize a lease of mineral interests on land subject to existing homestead rights without the written consent of the owner of the homestead rights given in the manner provided by law for the conveyance of homesteads.

(j) In this section, "contingent future interest" means a legal or equitable interest arising by way of remainder, reversion, possibility of reverter, executory devise, on the occurrence of a condition subsequent, or otherwise. (V.A.C.S. Art. 2320c.)

**CHAPTER 65. INJUNCTION**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 65.001. APPLICATION OF EQUITY PRINCIPLES**

[Sections 65.002-65.010 reserved for expansion]

**SUBCHAPTER B. AVAILABILITY OF REMEDY**

**Sec. 65.011. GROUNDS GENERALLY**

**Sec. 65.012. OPERATION OF WELL OR MINE**

**Sec. 65.013. STAY OF JUDGMENT OR PROCEEDING**

**Sec. 65.014. LIMITATIONS ON STAY OF EXECUTION OF JUDGMENT**

**Sec. 65.015. CLOSING OF STREETS**

[Sections 65.016-65.020 reserved for expansion]

**SUBCHAPTER C. JURISDICTION OF PROCEEDINGS; VENUE**

**Sec. 65.021. JURISDICTION OF PROCEEDING**

**Sec. 65.022. RETURN OF WRIT; HEARING BY NONRESIDENT JUDGE**

**Sec. 65.023. PLACE FOR TRIAL**

[Sections 65.024-65.030 reserved for expansion]

**SUBCHAPTER D. INJUNCTION OBTAINED FOR PURPOSES OF DELAYING COLLECTION OF MONEY**

**Sec. 65.031. DISSOLUTION; AWARD OF DAMAGES**

**CHAPTER 65. INJUNCTION**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 65.001. APPLICATION OF EQUITY PRINCIPLES.** The principles governing courts of equity govern injunction proceedings if not in conflict with this chapter or other law. (V.A.C.S. Art. 4663.)

[Sections 65.002-65.010 reserved for expansion]

**SUBCHAPTER B. AVAILABILITY OF REMEDY**

**Sec. 65.011. GROUNDS GENERALLY.** A writ of injunction may be granted if:

- (1) the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant;

(2) a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual;

(3) the applicant is entitled to a writ of injunction under the principles of equity and the statute of this state relating to injunctions;

(4) a cloud would be placed on the title of real property being sold under an execution against a party having no interest in the real property subject to execution at the time of sale, irrespective of any remedy at law; or

(5) irreparable injury to real or personal property is threatened, irrespective of any remedy at law. (V.A.C.S. Art. 4642 (part).)

**Sec. 65.012. OPERATION OF WELL OR MINE.** (a) A court may issue an injunction or temporary restraining order prohibiting subsurface drilling or mining operations only if an adjacent landowner filing an application claims that a wrongful act caused injury to his surface or improvements or loss of or injury to his minerals and if the party against whom the injunction is sought is unable to respond in damages for the resulting injuries.

(b) To secure the payment of any injuries that may be sustained by the complainant as a result of subsurface drilling or mining operations, the party against whom an injunction is sought under this section shall enter into a good and sufficient bond in an amount fixed by the court hearing the application.

(c) The court may appoint a trustee or receiver instead of requiring a bond if the court considers it necessary to protect the interests involved in litigation concerning an injunction under this section. The trustee or receiver has the powers prescribed by the court and shall take charge of and hold the minerals produced from the drilling or mining operation or the proceeds from the disposition of those minerals, subject to the final disposition of the litigation. (V.A.C.S. Art. 4644.)

**Sec. 65.013. STAY OF JUDGMENT OR PROCEEDING.** An injunction may not be granted to stay a judgment or proceeding at law except to stay as much of the recovery or cause of action as the complainant in his petition shows himself equitably entitled to be relieved against and as much as will cover the costs. (V.A.C.S. Art. 4645.)

**Sec. 65.014. LIMITATIONS ON STAY OF EXECUTION OF JUDGMENT.** (a) Except as provided by Subsection (b), an injunction to stay execution of a valid judgment may not be granted more than one year after the date on which the judgment was rendered unless:

(1) the application for the injunction has been delayed because of fraud or false promises of the plaintiff in the judgment practiced or made at the time of or after rendition of the judgment; or

(2) an equitable matter or defense arises after the rendition of the judgment.

(b) If the applicant for an injunction to stay execution of a judgment was absent from the state when the judgment was rendered and was unable to apply for the writ within one year after the date of rendition, the injunction may be granted at any time within two years after that date. (V.A.C.S. Art. 4646.)

**Sec. 65.015. CLOSING OF STREETS.** An injunction may not be granted to stay or prevent the governing body of an incorporated city from vacating, abandoning, or closing a street or alley except on the suit of a person:

(1) who is the owner or lessee of real property abutting the part of the street or alley vacated, abandoned, or closed; and

(2) whose damages have neither been ascertained and paid in a condemnation suit by the city nor released. (V.A.C.S. Art. 4646a.)

[Sections 65.016-65.020 reserved for expansion]

## SUBCHAPTER C. JURISDICTION OF PROCEEDINGS; VENUE

**Sec. 65.021. JURISDICTION OF PROCEEDING.** (a) The judge of a district or county court in term or vacation shall hear and determine applications for writs of injunction.

(b) This section does not limit injunction jurisdiction granted by law to other courts. (V.A.C.S. Art. 4642 (part).)

**Sec. 65.022. RETURN OF WRIT; HEARING BY NONRESIDENT JUDGE.** (a) Except as provided by this section, a writ of injunction is returnable only to the court granting the writ.

(b) A district judge may grant a writ returnable to a court other than his own if the resident judge refuses to act or cannot hear and act on the application because of his absence, sickness, inability, inaccessibility, or disqualification. Those facts must be fully set out in the application or in an affidavit accompanying the application. A judge who refuses to act shall note that refusal and the reasons for refusal on the writ. A district judge may not grant the writ if the application has been acted on by another district judge.

(c) A district judge may grant a writ returnable to a court other than his own to stay execution or restrain foreclosure, sale under a deed of trust, trespass, removal of property, or an act injurious to or impairing riparian or easement rights if satisfactory proof is made to the nonresident judge that it is impracticable for the applicant to reach the resident judge and procure the action of the resident judge in time to put into effect the purposes of the application.

(d) A district judge may grant a writ returnable to a court other than his own if the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to put into effect the purpose of the writ sought. In seeking a writ under this subsection, the applicant or attorney for the applicant shall attach to the application an affidavit that fully states the facts of the inaccessibility and the efforts made to reach and communicate with the resident judge. The judge to whom application is made shall refuse to hear the application unless he determines that the applicant made fair and reasonable efforts to reach and communicate with the resident judge. The injunction may be dissolved on a showing that the applicant did not first make reasonable efforts to procure a hearing on the application before the resident judge. (V.A.C.S. Arts. 4642 (part), 4643.)

Sec. 65.023. PLACE FOR TRIAL. (a) Except as provided by Subsection (b), a writ of injunction against a party who is a resident of this state shall be tried in a district or county court in the county in which the party is domiciled. If the writ is granted against more than one party, it may be tried in the proper court of the county in which either party is domiciled.

(b) A writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered. (V.A.C.S. Art. 4656.)

[Sections 65.024-65.030 reserved for expansion]

#### SUBCHAPTER D. INJUNCTION OBTAINED FOR PURPOSES OF DELAYING COLLECTION OF MONEY

Sec. 65.031. DISSOLUTION; AWARD OF DAMAGES. If on final hearing a court dissolves in whole or in part an injunction enjoining the collection of money and the injunction was obtained only for delay, the court may assess damages in an amount equal to 10 percent of the amount released by dissolution of the injunction, exclusive of costs. (V.A.C.S. Art. 4660.)

#### CHAPTER 66. QUO WARRANTO

Sec. 66.001. GROUNDS

Sec. 66.002. INITIATION OF SUIT

Sec. 66.003. JUDGMENT

#### CHAPTER 66. QUO WARRANTO

Sec. 66.001. GROUNDS. An action in the nature of quo warranto is available if:

- (1) a person usurps, intrudes into, or unlawfully holds or executes a franchise or an office, including an office in a corporation created by the authority of this state;
- (2) a public officer does an act or allows an act that by law causes a forfeiture of his office;
- (3) an association of persons acts as a corporation without being legally incorporated;
- (4) a corporation does or omits an act that requires a surrender or causes a forfeiture of its rights and privileges as a corporation;
- (5) a corporation exercises power not granted by law;
- (6) a railroad company charges an extortionate rate for transportation of freight or passengers; or

(7) a railroad company unlawfully refuses to move over its lines the cars of another railroad company. (V.A.C.S. Art. 6253 (part).)

Sec. 66.002. INITIATION OF SUIT. (a) If grounds for the remedy exist, the attorney general or the county or district attorney of the proper county may petition the district court of the proper county or a district judge if the court is in vacation for leave to file an information in the nature of quo warranto.

(b) The petition must state that the information is sought in the name of the State of Texas.

(c) The attorney general or county or district attorney may file the petition on his own motion or at the request of an individual relator.

(d) If there is probable ground for the proceeding, the judge shall grant leave to file the information, order the information to be filed, and order process to be issued. (V.A.C.S. Art. 6253 (part).)

Sec. 66.003. JUDGMENT. If the person against whom the information is filed is found guilty as charged, the court:

- (1) shall enter judgment removing the person from the office or franchise;
- (2) shall enter judgment for the costs of prosecution in favor of the relator; and
- (3) may fine the person for usurping, intruding into, or unlawfully holding and executing the office or franchise. (V.A.C.S. Art. 6257.)

[Chapters 67-70 reserved for expansion]

#### TITLE 4. LIABILITY IN TORT

### CHAPTER 71. WRONGFUL DEATH; SURVIVAL; INJURIES OCCURRING OUT OF STATE

#### SUBCHAPTER A. WRONGFUL DEATH

Sec. 71.001. DEFINITIONS

Sec. 71.002. CAUSE OF ACTION

Sec. 71.003. APPLICATION

Sec. 71.004. BENEFITTING FROM AND BRINGING ACTION

Sec. 71.005. EVIDENCE RELATING TO MARITAL STATUS

Sec. 71.006. EFFECT OF FELONIOUS ACT

Sec. 71.007. INEFFECTIVE AGREEMENT

Sec. 71.008. DEATH OF DEFENDANT

Sec. 71.009. EXEMPLARY DAMAGES

Sec. 71.010. AWARD AND APPORTIONMENT OF DAMAGES

Sec. 71.011. DAMAGES NOT SUBJECT TO DEBTS

[Sections 71.012-71.020 reserved for expansion]

#### SUBCHAPTER B. SURVIVAL

Sec. 71.021. SURVIVAL OF CAUSE OF ACTION

[Sections 71.022-71.030 reserved for expansion]

### SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

Sec. 71.031. ACT OR OMISSION OUT OF STATE

#### TITLE 4. LIABILITY IN TORT

### CHAPTER 71. WRONGFUL DEATH; SURVIVAL; INJURIES OCCURRING OUT OF STATE

#### SUBCHAPTER A. WRONGFUL DEATH

Sec. 71.001. DEFINITIONS. In this subchapter:

(1) "Corporation" means a municipal, private, public, or quasi-public corporation other than a county or a common or independent school district.

(2) "Person" means an individual, association of individuals, joint-stock company, or corporation or a trustee or receiver of an individual, association of individuals, joint-stock company, or corporation. (V.A.C.S. Art. 4671 (part).)

Sec. 71.002. CAUSE OF ACTION. (a) An action for actual damages arising from an injury that causes an individual's death may be brought if liability exists under this section.

(b) A person is liable for damages arising from an injury that causes an individual's death if the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

(c) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a proprietor, owner, charterer, or hirer of an industrial or public utility plant or of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers; and

(2) the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

(d) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a receiver, trustee, or other person in charge of or in control of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery; and

(2) the injury was caused by:

(A) the person's wrongful act, neglect, carelessness, unskillfulness, or default;

(B) the person's servant's or agent's wrongful act, neglect, carelessness, unfitness, unskillfulness, or default; or

(C) a bad or unsafe condition of the railroad, street railway, or other machinery under the person's control or operation.

(e) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a receiver, trustee, or other person in charge of or in control of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery; and

(2) the action could have been brought against the owner of the railroad, street railway, or other machinery if he had been acting as operator. (V.A.C.S. Art. 4671 (part).)

Sec. 71.003. APPLICATION. (a) This subchapter applies only if the individual injured would have been entitled to bring an action for the injury if he had lived.

(b) This subchapter applies whether the injury occurs inside or outside this state. (V.A.C.S. Arts. 4671 (part), 4672.)

Sec. 71.004. BENEFITTING FROM AND BRINGING ACTION. (a) An action to recover damages as provided by this subchapter is for the exclusive benefit of the surviving spouse, children, and parents of the deceased.

(b) The surviving spouse, children, and parents of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all.

(c) If none of the individuals entitled to bring an action have begun the action within three calendar months after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals. (V.A.C.S. Art. 4675 (part).)

Sec. 71.005. EVIDENCE RELATING TO MARITAL STATUS. In an action under this subchapter, evidence of the actual ceremonial remarriage of the surviving spouse is admissible, if it is true, but the defense is prohibited from directly or indirectly mentioning or alluding to a common-law marriage, an extramarital relationship, or the marital prospects of the surviving spouse. (V.A.C.S. Art. 4675a.)

Sec. 71.006. EFFECT OF FELONIOUS ACT. An action under this subchapter is not precluded because the death is caused by a felonious act or because there may be a criminal proceeding in relation to the felony. (V.A.C.S. Art. 4674.)

Sec. 71.007. INEFFECTIVE AGREEMENT. An agreement between the owner of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery and an individual, corporation, trustee, receiver, lessee, joint-stock association, or other entity in control of or operating the vehicle, plant, or other machinery does not release the owner or the entity controlling or operating the vehicle, plant, or other machinery from liability provided by this subchapter. (V.A.C.S. Art. 4671 (part).)

Sec. 71.008. DEATH OF DEFENDANT. (a) If a defendant dies while an action under this subchapter is pending or if the individual against whom the action may have been instituted dies before the action is begun, the executor or administrator of the estate may be made a defendant, and the action may be prosecuted as though the defendant or individual were alive.

(b) A judgment in favor of the plaintiff shall be paid in due course of administration. (V.A.C.S. Art. 4676.)

Sec. 71.009. EXEMPLARY DAMAGES. When the death is caused by the wilful act or omission or gross negligence of the defendant, exemplary as well as actual damages may be recovered. (V.A.C.S. Art. 4673.)

Sec. 71.010. AWARD AND APPORTIONMENT OF DAMAGES. (a) The jury may award damages in an amount proportionate to the injury resulting from the death.

(b) The damages awarded shall be divided, in shares as found by the jury in its verdict, among the individuals who are entitled to recover and who are alive at that time. (V.A.C.S. Art. 4677.)

Sec. 71.011. DAMAGES NOT SUBJECT TO DEBTS. Damages recovered in an action under this subchapter are not subject to the debts of the deceased. (V.A.C.S. Art. 4675 (part).)

[Sections 71.012-71.020 reserved for expansion]

### SUBCHAPTER B. SURVIVAL

Sec. 71.021. **SURVIVAL OF CAUSE OF ACTION.** (a) A cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person or because of the death of a person liable for the injury.

(b) A personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person. The action survives against the liable person and the person's legal representatives.

(c) The suit may be instituted and prosecuted as if the liable person were alive. (V.A.C.S. Art. 5525.)

[Sections 71.022-71.030 reserved for expansion]

### SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

Sec. 71.031. **ACT OR OMISSION OUT OF STATE.** (a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action; and

(3) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) All matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case. (V.A.C.S. Art. 4678.)

## CHAPTER 72. LIABILITY OF MOTOR VEHICLE OWNER OR OPERATOR TO GUEST

Sec. 72.001. **LIMITED LIABILITY**

Sec. 72.002. **LIMITATION NOT APPLICABLE**

Sec. 72.003. **EFFECT ON OTHER LIABILITY**

Sec. 72.004. **OFFSET FOR MEDICAL EXPENSES PAID**

## CHAPTER 72. LIABILITY OF MOTOR VEHICLE OWNER OR OPERATOR TO GUEST

Sec. 72.001. **LIMITED LIABILITY.** A person who is related to the owner or operator of a motor vehicle within the second degree by consanguinity or affinity and who is being transported in the motor vehicle over a public highway of this state as a guest without payment for the transportation has a cause of action against the owner or operator of the motor vehicle for injury, death, or loss in an accident only if the accident was intentional on the part of the owner or operator or was caused by his heedlessness or reckless disregard of the rights of others. (V.A.C.S. Art. 6701b, Sec. 1(a).)

Sec. 72.002. **LIMITATION NOT APPLICABLE.** There is no limitation under this chapter on the liability of an owner or operator who is not related to the guest within the second degree by consanguinity or affinity. (New.)

Sec. 72.003. **EFFECT ON OTHER LIABILITY.** (a) This chapter does not affect judicially developed or developing rules under which a person is or is not totally or partially immune from tort liability by virtue of family relationship.

(b) This chapter does not relieve the owner or operator of a motor vehicle being demonstrated to a prospective purchaser or relieve a public carrier of responsibility for injuries sustained by a passenger being transported. (V.A.C.S. Art. 6701b, Secs. 1(b), 2.)

Sec. 72.004. **OFFSET FOR MEDICAL EXPENSES PAID.** (a) The owner or operator or his liability insurance carrier is entitled to an offset against any award made to the guest on a liability claim in an amount equal to the amount paid by the owner, operator, or insurance carrier for medical expenses of the guest.



(b) This section does not authorize a direct action against a liability insurance carrier. (V.A.C.S. Art. 6701b, Sec. 1(c).)

### CHAPTER 73. LIBEL

Sec. 73.001. ELEMENTS OF LIBEL

Sec. 73.002. PRIVILEGED MATTERS

Sec. 73.003. MITIGATING FACTORS

Sec. 73.004. LIABILITY OF BROADCASTER

Sec. 73.005. TRUTH A DEFENSE

Sec. 73.006. OTHER DEFENSES

### CHAPTER 73. LIBEL

Sec. 73.001. ELEMENTS OF LIBEL. A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury. (V.A.C.S. Art. 5430.)

Sec. 73.002. PRIVILEGED MATTERS. (a) The publication by a newspaper or other periodical of a matter covered by this section is privileged and is not a ground for a libel action. This privilege does not extend to the republication of a matter if it is proved that the matter was republished with actual malice after it had ceased to be of public concern.

(b) This section applies to:

(1) a fair, true, and impartial account of:

(A) a judicial proceeding, unless the court has prohibited publication of a matter because in its judgment the interests of justice demand that the matter not be published;

(B) an official proceeding, other than a judicial proceeding, to administer the law;

(C) an executive or legislative proceeding (including a proceeding of a legislative committee), a proceeding in or before a managing board of an educational or eleemosynary institution supported from the public revenue, of the governing body of a city or town, of a county commissioners court, and of a public school board or a report of or debate and statements made in any of those proceedings; or

(D) the proceedings of a public meeting dealing with a public purpose, including statements and discussion at the meeting or other matters of public concern occurring at the meeting; and

(2) reasonable and fair comment on or criticism of an official act of a public official or other matter of public concern published for general information. (V.A.C.S. Art. 5432.)

Sec. 73.003. MITIGATING FACTORS. (a) To determine the extent and source of actual damages and to mitigate exemplary damages, the defendant in a libel action may give evidence of the following matters if they have been specially pleaded:

(1) all material facts and circumstances surrounding the claim for damages and defenses to the claim;

(2) all facts and circumstances under which the libelous publication was made; and

(3) any public apology, correction, or retraction of the libelous matter made and published by the defendant.

(b) To mitigate exemplary damages, the defendant in a libel action may give evidence of the intention with which the libelous publication was made if the matter has been specially pleaded. (V.A.C.S. Art. 5431 (part).)

Sec. 73.004. LIABILITY OF BROADCASTER. (a) A broadcaster is not liable in damages for a defamatory statement published or uttered in or as a part of a radio or television broadcast by one other than the broadcaster unless the complaining party proves that the broadcaster failed to exercise due care to prevent the publication or utterance of the statement in the broadcast.

(b) In this section, "broadcaster" means an owner, licensee, or operator of a radio or television station or network of stations and the agents and employees of the owner, licensee, or operator. (V.A.C.S. Art. 5433a.)

Sec. 73.005. TRUTH A DEFENSE. The truth of the statement in the publication on which an action for libel is based is a defense to the action. (V.A.C.S. Art. 5431 (part).)

Sec. 73.006. OTHER DEFENSES. This chapter does not affect the existence of common law, statutory law, or other defenses to libel. (V.A.C.S. Art. 5433.)

## CHAPTER 74. GOOD SAMARITAN LAW: LIABILITY FOR EMERGENCY CARE

### Sec. 74.001. LIABILITY FOR EMERGENCY CARE

### Sec. 74.002. UNLICENSED MEDICAL PERSONNEL

## CHAPTER 74. GOOD SAMARITAN LAW: LIABILITY FOR EMERGENCY CARE

Sec. 74.001. LIABILITY FOR EMERGENCY CARE. (a) A person who in good faith administers emergency care at the scene of an emergency or in a hospital is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent.

(b) This section does not apply to care administered:

- (1) for or in expectation of remuneration;
- (2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration;
- (3) by a person who regularly administers care in a hospital emergency room; or
- (4) by an admitting physician or a treating physician associated by the admitting physician of the patient bringing a health-care liability claim. (V.A.C.S. Art. 1a (part).)

Sec. 74.002. UNLICENSED MEDICAL PERSONNEL. Persons not licensed in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration. (V.A.C.S. Art. 1a (part).)

## CHAPTER 75. LIMITATION OF LANDOWNERS' LIABILITY

### Sec. 75.001. DEFINITIONS

### Sec. 75.002. LIABILITY LIMITED

### Sec. 75.003. APPLICATION AND EFFECT OF CHAPTER

## CHAPTER 75. LIMITATION OF LANDOWNERS' LIABILITY

Sec. 75.001. DEFINITIONS. In this chapter:

- (1) "Premises" includes land, roads, water, watercourses, private ways, and buildings, structures, machinery, and equipment attached to or located on the land, road, water, watercourse, or private way.
- (2) "Recreation" means an activity such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, and waterskiing and other water sports. (V.A.C.S. Art. 1b, Sec. 6.)

Sec. 75.002. LIABILITY LIMITED. If an owner, lessee, or occupant of real property gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:

- (1) assure that the premises are safe for that purpose;
- (2) owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises; or
- (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted. (V.A.C.S. Art. 1b, Sec. 1.)

Sec. 75.003. APPLICATION AND EFFECT OF CHAPTER. (a) This chapter does not relieve any owner, lessee, or occupant of real property of any liability that would otherwise exist for deliberate, wilful, or malicious injury to a person or to property.

(b) This chapter does not affect the doctrine of attractive nuisance.  
 (c) This chapter does not affect the liability of an owner, lessee, or occupant of real property who:

- (1) uses or permits the use of all or any part of the premises as a commercial recreational enterprise for profit; or
  - (2) charges for entry to the premises, other than a charge against those who remove game from the premises in an amount reasonably necessary to replace the game.
- (d) This chapter does not create any liability. (V.A.C.S. Art. 1b, Secs. 2, 3, 4, 5.)

## CHAPTER 76. FOOD DONORS

### Sec. 76.001. DEFINITIONS

Sec. 76.002. SHORT TITLE

Sec. 76.003. APPARENTLY WHOLESOME FOOD

Sec. 76.004. LIABILITY FOR DAMAGES FROM DONATED FOOD

### CHAPTER 76. FOOD DONORS

Sec. 76.001. DEFINITIONS. In this chapter:

(1) "Donate" means to give without requiring anything of monetary value from the recipient.

(2) "Intentional misconduct" means conduct that the actor knows is harmful to the health or well-being of another person.

(3) "Nonprofit organization" means an incorporated or unincorporated organization that has been established and is operating for religious, charitable, or educational purposes and that does not distribute any of its income to its members, directors, or officers.

(4) "Person" means an individual, corporation, partnership, organization, or association. (V.A.C.S. Art. 4476-5c, Sec. 2 (part).)

Sec. 76.002. SHORT TITLE. This chapter may be cited as the Good Faith Donor Act. (V.A.C.S. Art. 4476-5c, Sec. 1.)

Sec. 76.003. APPARENTLY WHOLESOME FOOD. For the purposes of this chapter, food is apparently wholesome if the food meets all quality standards of local, county, state, and federal agricultural and health laws and rules, even though the food is not readily marketable due to appearance, age, freshness, grade, size, surplus, or other condition. Canned goods that are leaking, swollen, dented on a seam, or no longer airtight are not apparently wholesome food. (V.A.C.S. Art. 4476-5c, Sec. 2 (part).)

Sec. 76.004. LIABILITY FOR DAMAGES FROM DONATED FOOD. (a) A person is not subject to civil or criminal liability arising from the condition of apparently wholesome food that the person donates to a nonprofit organization for distribution to the needy. This subsection does not apply to an injury or death that results from an act or omission of the donor constituting gross negligence, recklessness, or intentional misconduct.

(b) A nonprofit organization is not subject to civil or criminal liability arising from the condition of apparently wholesome food that it distributes to the needy at no charge in substantial compliance with applicable local, county, state, and federal laws and rules regarding the storage and handling of food for distribution to the public. This subsection does not apply to an injury or death that results from an act or omission of the organization constituting gross negligence, recklessness, or intentional misconduct.

(c) This chapter does not create any liability. (V.A.C.S. Art. 4476-5c, Sec. 3.)

### CHAPTER 77. TRANSPLANTS AND TRANSFUSIONS

Sec. 77.001. DEFINITION

Sec. 77.002. POLICY

Sec. 77.003. LIMITATION OF LIABILITY

Sec. 77.004. BLOOD BANK: COMPENSATION OF SELLER

### CHAPTER 77. TRANSPLANTS AND TRANSFUSIONS

Sec. 77.001. DEFINITION. In this chapter, "human body part" means any tissue, organ, blood, or components thereof from a human. (V.A.C.S. Art. 4590-3, Sec. 2.)

Sec. 77.002. POLICY. It is important to the health and welfare of the people of this state that scientific knowledge, skills, and materials be available for the procedures of transplantation, injection, transfusion, or other transfer of human body parts. The imposition of strict liability on persons and organizations engaged in these scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of the knowledge, skills, and materials. It is therefore the public policy of this state to promote the health and welfare of the people by limiting the legal liability arising from those scientific procedures to instances of negligence. (V.A.C.S. Art. 4590-3, Sec. 1.)

Sec. 77.003. LIMITATION OF LIABILITY. (a) A person who donates, obtains, prepares, transplants, injects, transfuses, or transfers a human body part from a living or dead human to another human or a person who assists or participates in that activity is not liable as a result of that activity.

(b) The person remains liable for the person's own negligence. (V.A.C.S. Art. 4590-3, Sec. 2.)

Sec. 77.004. BLOOD BANK: COMPENSATION OF SELLER. (a) This section applies only to a blood bank licensed either by the Division of Biological Standards of the National Institute of Health or by the American Association of Blood Banks.

(b) A blood bank may not pay cash for blood. A blood bank may not pay a blood seller by check unless the check is sent by United States mail to the seller after the 15th day following the day the blood is taken from the seller.

(c) If a blood bank violates Subsection (b) and the blood contains harmful substances, the blood bank is not entitled to the immunity established by this chapter. The blood bank has the burden of establishing that the blood was not purchased in violation of Subsection (b). (V.A.C.S. Art. 4590-3, Sec. 3.)

**CHAPTER 78. VOLUNTEER FIRE FIGHTERS**

**Sec. 78.001. LIABILITY**

**CHAPTER 78. VOLUNTEER FIRE FIGHTERS**

Sec. 78.001. **LIABILITY.** A volunteer fire fighter or a volunteer fire department is not liable for damage to property resulting from the fire fighter's or the department's reasonable and necessary action in fighting or extinguishing a fire on the property. (V.A.C.S. Art. 1070.1.)

**CHAPTER 79. HAZARDOUS MATERIALS**

**Sec. 79.001. DEFINITIONS**

**Sec. 79.002. LIABILITY OF PERSON GIVING ASSISTANCE**

**CHAPTER 79. HAZARDOUS MATERIALS**

Sec. 79.001. **DEFINITIONS.** In this chapter:

(1) "Hazardous material" means:

(A) a substance classified as a hazardous material under state or federal law or under a rule adopted pursuant to state or federal law; or

(B) a chemical, petroleum product, gas, or other substance that, if discharged or released, is likely to create an imminent danger to individuals, property, or the environment.

(2) "Person" means an individual, association, corporation, or other private legal entity. (V.A.C.S. Art. 9207, Sec. 1 (part).)

Sec. 79.002. **LIABILITY OF PERSON GIVING ASSISTANCE.** (a) Except in a case of reckless conduct or intentional, wilful, or wanton misconduct, a person is immune from civil liability for an act or omission that occurs in giving care, assistance, or advice with respect to the management of an incident that:

(1) has already occurred;

(2) is related to the storage or transportation of a hazardous material; and

(3) endangers or threatens to endanger individuals, property, or the environment as a result of the spillage, seepage, or other release of a hazardous material or as a result of fire or explosion involving a hazardous material.

(b) This section does not apply to a person giving care, assistance, or advice for or in expectation of compensation from or on behalf of the recipient of the care, assistance, or advice in excess of reimbursement for expenses incurred. (V.A.C.S. Art. 9207, Sec. 1 (part), Sec. 2.)

[Chapters 80-100 reserved for expansion]

**TITLE 5. GOVERNMENTAL LIABILITY**

**CHAPTER 101. TORT CLAIMS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 101.001. DEFINITIONS**

**Sec. 101.002. SHORT TITLE**

**Sec. 101.003. REMEDIES ADDITIONAL**

[Sections 101.004-101.020 reserved for expansion]

**SUBCHAPTER B. TORT LIABILITY OF GOVERNMENTAL UNITS**

**Sec. 101.021. GOVERNMENTAL LIABILITY**

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**Sec. 101.023. LIMITATION ON AMOUNT OF LIABILITY**

**Sec. 101.024. EXEMPLARY DAMAGES**

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[Sections 101.029-101.050 reserved for expansion]

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Sec. 101.107. PAYMENT AND COLLECTION OF JUDGMENT

Sec. 101.108. AD VALOREM TAXES FOR PAYMENT OF JUDGMENT

Sec. 101.109. PAYMENT OF CLAIMS AGAINST CERTAIN UNIVERSITIES

## TITLE 5. GOVERNMENTAL LIABILITY

### CHAPTER 101. TORT CLAIMS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Employee" means a person, including an officer or agent, who is in the paid service of a governmental unit by competent authority, but does not include an independent contractor, an agent or employee of an independent contractor, or a person who performs tasks the details of which the governmental unit does not have the legal right to control.

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, and river authority; and

(C) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

(3) "Motor-driven equipment" does not include:

(A) equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state; or

(B) medical equipment, such as iron lungs, located in hospitals.

(4) "Scope of employment" means the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority.

(5) "State government" means an agency, board, commission, department, or office, other than a district or authority created under Article XVI, Section 59, of the Texas Constitution, that:

(A) was created by the constitution or a statute of this state; and

(B) has statewide jurisdiction. (V.A.C.S. Art. 6252-19, Secs. 2, 3(a), (b) (part), 18(a) (part).)

Sec. 101.002. **SHORT TITLE.** This chapter may be cited as the Texas Tort Claims Act. (V.A.C.S. Art. 6252-19, Sec. 1.)

Sec. 101.003. **REMEDIES ADDITIONAL.** The remedies authorized by this chapter are in addition to any other legal remedies. (V.A.C.S. Art. 6252-19, Sec. 6 (part).)

[Sections 101.004-101.020 reserved for expansion]

## SUBCHAPTER B. TORT LIABILITY OF GOVERNMENTAL UNITS

Sec. 101.021. **GOVERNMENTAL LIABILITY.** A governmental unit in the state is liable for:

(1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

(A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and

(B) the employee would be personally liable to the claimant according to Texas law; and

(2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law. (V.A.C.S. Art. 6252-19, Sec. 3(b) (part).)

Sec. 101.022. **DUTY OWED: PREMISE AND SPECIAL DEFECTS.** (a) If a claim arises from a premise defect, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property, unless the claimant pays for the use of the premises.

(b) The limitation of duty in this section does not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads, or streets or to the duty to warn of the absence, condition, or malfunction of traffic signs, signals, or warning devices as is required by Section 101.060. (V.A.C.S. Art. 6252-19, Sec. 18(b).)

Sec. 101.023. **LIMITATION ON AMOUNT OF LIABILITY.** (a) Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

(b) Liability of a unit of local government under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. (V.A.C.S. Art. 6252-19, Sec. 3(b) (part).)

Sec. 101.024. **EXEMPLARY DAMAGES.** This chapter does not authorize exemplary damages. (V.A.C.S. Art. 6252-19, Sec. 3(b) (part).)

Sec. 101.025. **WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE.** (a) Sovereign immunity to suit is waived and abolished to the extent of liability created by this chapter.

(b) A person having a claim under this chapter may sue a governmental unit for damages allowed by this chapter. (V.A.C.S. Art. 6252-19, Sec. 4.)

Sec. 101.026. **INDIVIDUAL'S IMMUNITY PRESERVED.** To the extent an employee has individual immunity from a tort claim for damages, it is not affected by this chapter. (V.A.C.S. Art. 6252-19, Sec. 15.)

Sec. 101.027. **LIABILITY INSURANCE.** (a) Each governmental unit may purchase insurance policies protecting the unit and the unit's employees against claims under this chapter.

(b) The policies may relinquish to the insurer the right to investigate, defend, compromise, and settle any claim under this chapter to which the insurance coverage extends.

(c) This state or a political subdivision of the state may not require an employee to purchase liability insurance as a condition of employment if the state or the political subdivision is insured by a liability insurance policy. (V.A.C.S. Art. 6252-19, Secs. 9 (part), 12(b).)

Sec. 101.028. **WORKERS' COMPENSATION INSURANCE.** A governmental unit that has workers' compensation insurance or that accepts the workers' compensation laws of this state is entitled to the privileges and immunities granted by the workers' compensation laws of this state to private individuals and corporations. (V.A.C.S. Art. 6252-19, Sec. 19.)

[Sections 101.029-101.050 reserved for expansion]

### SUBCHAPTER C. EXCLUSIONS AND EXCEPTIONS

Sec. 101.051. **SCHOOL AND JUNIOR COLLEGE DISTRICTS PARTIALLY EXCLUDED.** Except as to motor vehicles, this chapter does not apply to a school district or to a junior college district. (V.A.C.S. Art. 6252-19, Sec. 19A.)

Sec. 101.052. **LEGISLATIVE.** This chapter does not apply to a claim based on an act or omission of the legislature or a member of the legislature acting in his official capacity or to the legislative functions of a governmental unit. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (2).)

Sec. 101.053. **JUDICIAL.** (a) This chapter does not apply to a claim based on an act or omission of a court of this state or any member of a court of this state acting in his official capacity or to a judicial function of a governmental unit.

(b) This chapter does not apply to a claim based on an act or omission of an employee in the execution of a lawful order of any court. (V.A.C.S. Art. 6252-19, Sec. 14, Subdivs. (3), (4).)

Sec. 101.054. **STATE MILITARY PERSONNEL.** This chapter does not apply to a claim arising from the activities of the state military forces when on active duty under the lawful orders of competent authority. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (6).)

Sec. 101.055. **CERTAIN GOVERNMENTAL FUNCTIONS.** This chapter does not apply to a claim arising:

(1) in connection with the assessment or collection of taxes by a governmental unit;

(2) from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action; or

(3) from the failure to provide or the method of providing police or fire protection. (V.A.C.S. Art. 6252-19, Sec. 14, Subdivs. (5), (8), (9) (part).)

Sec. 101.056. **DISCRETIONARY POWERS.** This chapter does not apply to a claim based on:

(1) the failure of a governmental unit to perform an act that the unit is not required by law to perform; or

(2) a governmental unit's decision not to perform an act or on its failure to make a decision on the performance or nonperformance of an act if the law leaves the performance or nonperformance of the act to the discretion of the governmental unit. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (7).)

Sec. 101.057. **CIVIL DISOBEDIENCE AND CERTAIN INTENTIONAL TORTS.** This chapter does not apply to a claim:

(1) based on an injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection, or rebellion; or

(2) arising out of assault, battery, false imprisonment, or any other intentional tort, including a tort involving disciplinary action by school authorities. (V.A.C.S. Art. 6252-19, Sec. 14, Subdivs. (9) (part), (10).)

Sec. 101.058. **MUNICIPAL PROPRIETARY FUNCTIONS.** This chapter does not apply to a proprietary function of a municipality. (V.A.C.S. Art. 6252-19, Sec. 18(a) (part).)

Sec. 101.059. **ATTRACTIVE NUISANCES.** This chapter does not apply to a claim based on the theory of attractive nuisance. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (11).)

Sec. 101.060. **TRAFFIC AND ROAD CONTROL DEVICES.** (a) This chapter does not apply to a claim arising from:

(1) the failure of a governmental unit initially to place a traffic or road sign, signal, or warning device if the failure is a result of discretionary action of the governmental unit;

(2) the absence, condition, or malfunction of a traffic or road sign, signal, or warning device unless the absence, condition, or malfunction is not corrected by the responsible governmental unit within a reasonable time after notice; or

(3) the removal or destruction of a traffic or road sign, signal, or warning device by a third person unless the governmental unit fails to correct the removal or destruction within a reasonable time after actual notice.

(b) The signs, signals, and warning devices referred to in this section are those used in connection with hazards normally connected with the use of the roadway.

(c) This section does not apply to the duty to warn of special defects such as excavations or roadway obstructions. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (12).)

Sec. 101.061. **TORT COMMITTED BEFORE JANUARY 1, 1970.** This chapter does not apply to a claim based on an act or omission that occurred before January 1, 1970. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (1).)

[Sections 101.062-101.100 reserved for expansion]

#### SUBCHAPTER D. PROCEDURES

Sec. 101.101. **NOTICE.** (a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the incident giving rise to the claim occurred. The notice must reasonably describe:

- (1) the damage or injury claimed;
- (2) the time and place of the incident; and
- (3) the incident.

(b) A city's charter and ordinance provisions requiring notice within a charter period permitted by law are ratified and approved.

(c) The notice requirements provided or ratified and approved by Subsections (a) and (b) do not apply if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged. (V.A.C.S. Art. 6252-19, Sec. 16.)

Sec. 101.102. **COMMENCEMENT OF SUIT.** (a) A suit under this chapter shall be brought in the county in which the cause of action or a part of the cause of action arises.

(b) The pleadings of the suit must name as defendant the governmental unit against which liability is to be established.

(c) In a suit against the state, citation must be served on the secretary of state. In other suits, citation must be served as in other civil cases unless no method of service is provided by law, in which case service may be on the administrative head of the governmental unit being sued. If the administrative head of the governmental unit is not available, the court in which the suit is pending may authorize service in any manner that affords the governmental unit a fair opportunity to answer and defend the suit. (V.A.C.S. Art. 6252-19, Secs. 5, 8.)

Sec. 101.103. **LEGAL REPRESENTATION.** (a) The attorney general shall defend each action brought under this chapter against a governmental unit that has authority and jurisdiction coextensive with the geographical limits of this state. The attorney general may be fully assisted by counsel provided by an insurance carrier.

(b) A governmental unit having an area of jurisdiction smaller than the entire state shall employ its own counsel according to the organic act under which the unit operates, unless the governmental unit has relinquished to an insurance carrier the right to defend against the claim. (V.A.C.S. Art. 6252-19, Sec. 9 (part).)

Sec. 101.104. **EVIDENCE OF INSURANCE COVERAGE.** (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under this chapter.

(b) Neither the existence nor the amount of the insurance is subject to discovery. (V.A.C.S. Art. 6252-19, Sec. 9 (part).)

Sec. 101.105. **SETTLEMENT.** (a) A cause of action under this chapter may be settled and compromised by the governmental unit if, in a case involving the state the governor determines, or if, in other cases the governing body of the governmental unit determines, that the compromise is in the best interests of the governmental unit.

(b) Approval is not required if the governmental unit has acquired insurance under this chapter. (V.A.C.S. Art. 6252-19, Sec. 10.)

Sec. 101.106. **EMPLOYEES NOT LIABLE AFTER SETTLEMENT OR JUDGMENT.** A judgment in an action or a settlement of a claim under this chapter bars any action involving the same subject matter by the claimant against the employee of the governmental unit whose act or omission gave rise to the claim. (V.A.C.S. Art. 6252-19, Sec. 12(a).)

Sec. 101.107. **PAYMENT AND COLLECTION OF JUDGMENT.** (a) A judgment in a suit under this chapter may be enforced only in the same manner and to the same extent as other judgments against the governmental unit are enforceable as provided by law, unless the governmental unit has liability or indemnity insurance protection, in which case the holder of the judgment may collect the judgment, to the extent of the insurer's liability, as provided in the insurance or indemnity contract or policy or as otherwise provided by law.



(b) A judgment or a portion of a judgment that is not payable by an insurer need not be paid by a governmental unit until the first fiscal year following the fiscal year in which the judgment becomes final.

(c) If in a fiscal year the aggregate amount of judgments under this chapter against a governmental unit that become final, excluding the amount payable by an insurer, exceeds one percent of the unit's budgeted tax funds for the fiscal year, excluding general obligation debt service requirements, the governmental unit may pay the judgments in equal annual installments for a period of not more than five years. If payments are extended under this subsection, the governmental unit shall pay interest on the unpaid balance at the rate provided by law. (V.A.C.S. Art. 6252-19, Sec. 11 (part).)

**Sec. 101.108. AD VALOREM TAXES FOR PAYMENT OF JUDGMENT.** (a) A governmental unit not fully covered by liability insurance may levy an ad valorem tax for the payment of any final judgment under this chapter.

(b) If necessary to pay the amount of a judgment, the ad valorem tax rate may exceed any legal tax rate limit applicable to the governmental unit except a limit imposed by the constitution. (V.A.C.S. Art. 6252-19, Sec. 11 (part).)

**Sec. 101.109. PAYMENT OF CLAIMS AGAINST CERTAIN UNIVERSITIES.** A claim under this chapter against a state-supported senior college or university is payable only by a direct legislative appropriation made to satisfy claims unless insurance has been acquired as provided by this chapter. If insurance has been acquired, the claimant is entitled to payment to the extent of the coverage as in other cases. (V.A.C.S. Art. 6252-19, Sec. 17.)

**CHAPTER 102. TORT CLAIMS PAYMENTS BY LOCAL GOVERNMENTS**

Sec. 102.001. DEFINITIONS

Sec. 102.002. PAYMENT OF CERTAIN TORT CLAIMS

Sec. 102.003. MAXIMUM PAYMENTS

Sec. 102.004. DEFENSE COUNSEL

Sec. 102.005. SECURITY FOR COURT COSTS NOT REQUIRED

Sec. 102.006. OTHER LAWS NOT AFFECTED

**CHAPTER 102. TORT CLAIMS PAYMENTS BY LOCAL GOVERNMENTS**

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Employee" includes an officer or employee, a former officer or employee, and the estate of an officer or employee or former officer or employee of a local government.

(2) "Local government" means a county, city, town, special purpose district, and any other political subdivision of the state. (V.A.C.S. Art. 6252-19b, Secs. 1, 2(a) (part).)

**Sec. 102.002. PAYMENT OF CERTAIN TORT CLAIMS.** (a) A local government may pay actual damages awarded against an employee of the local government if the damages:

(1) result from an act or omission of the employee in the course and scope of his employment for the local government; and

(2) arise from a cause of action for negligence.

(b) The local government may also pay the court costs and attorney's fees awarded against an employee for whom the local government may pay damages under this section.

(c) A local government may not pay damages awarded against an employee that:

(1) arise from a cause of action for official misconduct; or

(2) arise from a cause of action involving a wilful or wrongful act or omission or an act or omission constituting gross negligence.

(d) A local government may not pay damages awarded against an employee to the extent the damages are recoverable under an insurance contract or a self-insurance plan authorized by statute. (V.A.C.S. Art. 6252-19b, Secs. 2(a), 2(b) (part).)

**Sec. 102.003. MAXIMUM PAYMENTS.** Payments under this chapter by a local government may not exceed \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death or \$10,000 for a single occurrence of property damage. (V.A.C.S. Art. 6252-19b, Sec. 2(b) (part).)

**Sec. 102.004. DEFENSE COUNSEL.** (a) A local government may provide legal counsel to represent a defendant for whom the local government may pay damages under this chapter. The counsel provided by the local government may be the local government's regularly employed counsel, unless there is a potential conflict of interest between the local government and the defendant, in which case the local government may employ other legal counsel to defend the suit.

(b) Legal counsel provided under this section may settle the portion of a suit that may result in the payment of damages by the local government under this chapter. (V.A.C.S. Art. 6252-19b, Secs. 3(a), (b).)

Sec. 102.005. **SECURITY FOR COURT COSTS NOT REQUIRED.** In a case defended under this chapter, neither the defendant nor a local government is required to advance security for costs or to give bond on appeal or writ of error. (V.A.C.S. Art. 6252-19b, Sec. 3(c).)

Sec. 102.006. **OTHER LAWS NOT AFFECTED.** This chapter does not affect:

- (1) Chapter 101 of this code (the Texas Tort Claims Act); or
- (2) a defense, immunity, or jurisdictional bar available to a local government or an employee. (V.A.C.S. Art. 6252-19b, Sec. 2(b) (part).)

### CHAPTER 103. COMPENSATION TO PERSONS WRONGFULLY IMPRISONED

Sec. 103.001. **CLAIMANTS ENTITLED TO COMPENSATION**

Sec. 103.002. **WAIVER OF IMMUNITY; FILING SUIT**

Sec. 103.003. **STANDARD OF PROOF**

Sec. 103.004. **INSUFFICIENT STATE DEFENSES**

Sec. 103.005. **ADMISSIBLE EVIDENCE**

Sec. 103.006. **DAMAGES**

Sec. 103.007. **LIMITATION OF ACTION**

### CHAPTER 103. COMPENSATION TO PERSONS WRONGFULLY IMPRISONED

Sec. 103.001. **CLAIMANTS ENTITLED TO COMPENSATION.** A person is entitled to compensation if the person:

- (1) has served in whole or in part a sentence in prison under the laws of this state;
- (2) pleaded "not guilty" to the charge for which he was convicted and that led to the imprisonment;
- (3) is not guilty of the crime for which he was sentenced; and
- (4) has received a full pardon for the crime and punishment for which he was sentenced. (V.A.C.S. Art. 6252-25, Sec. 2.)

Sec. 103.002. **WAIVER OF IMMUNITY; FILING SUIT.** (a) A person may bring a suit against the state under this chapter, and the state's immunity from the suit is waived.

(b) The suit must be initiated by a verified petition alleging that the petitioner is entitled to compensation.

(c) The suit shall be brought in a court of competent jurisdiction either in the county of his residence at the time the suit is commenced or in Travis County.

(d) Citation must be served on the state by serving the attorney general. The attorney general shall represent the state in the proceeding. (V.A.C.S. Art. 6252-25, Sec. 3.)

Sec. 103.003. **STANDARD OF PROOF.** The petitioner must establish by a preponderance of the evidence that he is entitled to compensation and the amount of compensation to which he is entitled. (V.A.C.S. Art. 6252-25, Sec. 4 (part).)

Sec. 103.004. **INSUFFICIENT STATE DEFENSES.** The following are not defenses to an action brought under this chapter:

- (1) the judgment of conviction in the trial that resulted in the claimant's imprisonment; or
- (2) an indictment, information, complaint, or other formal accusation. (V.A.C.S. Art. 6252-25, Sec. 4 (part).)

Sec. 103.005. **ADMISSIBLE EVIDENCE.** (a) In the suit, the court may admit as evidence the record of the trial at which the petitioner was convicted and the pardon or proclamation issued to him by the governor.

(b) The court may also admit all court papers, orders, docket notations, or other writings of record in any court in this state as proof of the facts set forth in the writings. (V.A.C.S. Art. 6252-25, Sec. 5.)

Sec. 103.006. **DAMAGES.** (a) If the jury or the judge in a nonjury trial finds that the claimant is entitled to compensation, the jury or judge shall assess damages to compensate the claimant fairly and reasonably for:

- (1) physical and mental pain and suffering sustained by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction by the trial court; and

(2) all reasonable and necessary medical expenses incurred by him as a proximate result of the erroneous conviction or imprisonment from the time of the conviction by the trial court.

(b) Damages assessed for physical and mental pain and suffering may not exceed \$25,000. Total damages assessed under this chapter may not exceed \$50,000. (V.A.C.S. Art. 6252-25, Sec. 6.)

Sec. 103.007. **LIMITATION OF ACTION.** (a) A person who claims compensation for a sentence served in whole or in part after August 30, 1965, must bring the action within two years after:

- (1) the person ceased serving the sentence of imprisonment;
- (2) the person was released from custody; or
- (3) the person discovered or should have discovered the evidence substantiating his innocence.

(b) A person who claims compensation for a sentence served before August 30, 1965, must bring the action within two years after he discovered or should have discovered the evidence substantiating his innocence. (V.A.C.S. Art. 6252-25, Sec. 7.)

#### CHAPTER 104. STATE LIABILITY FOR CONDUCT OF PUBLIC SERVANTS

Sec. 104.001. **STATE LIABILITY; PERSONS COVERED**

Sec. 104.002. **STATE LIABILITY; CONDUCT COVERED**

Sec. 104.003. **LIMITS ON AMOUNT OF RECOVERABLE DAMAGES**

Sec. 104.004. **DEFENSE BY ATTORNEY GENERAL**

Sec. 104.005. **SERVICE OF PROCESS OR TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED**

Sec. 104.006. **SECURITY OR BOND**

Sec. 104.007. **FUNDS FOR DEFENSE**

Sec. 104.008. **NO WAIVER OF DEFENSES**

#### CHAPTER 104. STATE LIABILITY FOR CONDUCT OF PUBLIC SERVANTS

Sec. 104.001. **STATE LIABILITY; PERSONS COVERED.** In a cause of action based on conduct described in Section 104.002, the state is liable for actual damages, court costs, and attorney's fees adjudged against:

- (1) an employee, a member of the governing board, or any other officer of a state agency, institution, or department;
- (2) a former employee, former member of the governing board, or any other former officer of a state agency, institution, or department who was an employee or officer when the act or omission on which the damages are based occurred;
- (3) a physician licensed in this state who was performing services under a contract with the Disability Determination Division of the Texas Rehabilitation Commission or the Texas Department of Mental Health and Mental Retardation when the act or omission on which the damages are based occurred;
- (4) a person serving on the governing board of a foundation, corporation, or association at the request and on behalf of The University of Texas System; or
- (5) the estate of a person listed in this section. (V.A.C.S. Art. 6252-26, Secs. 1(a) (part), 5; Ed. Code Sec. 65.42.)

Sec. 104.002. **STATE LIABILITY; CONDUCT COVERED.** The state is liable under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of the agency, institution, or department and if:

- (1) the damages arise out of a cause of action for negligence, except a wilful or wrongful act or an act of gross negligence; or
- (2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the person acted in bad faith. (V.A.C.S. Art. 6252-26, Sec. 1(a) (part).)

Sec. 104.003. **LIMITS ON AMOUNT OF RECOVERABLE DAMAGES.** (a) State liability under this chapter may not exceed:

(1) \$100,000 to a single person and \$300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity; and

(2) \$10,000 for a single occurrence of damage to property.

(b) The state is not liable under this chapter to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. (V.A.C.S. Art. 6252-26, Sec. 1(b) (part).)

Sec. 104.004. **DEFENSE BY ATTORNEY GENERAL.** (a) The attorney general shall defend an individual or estate listed in Section 104.001 in a cause of action covered by this chapter.

(b) The attorney general may settle or compromise the portion of a lawsuit that may result in state liability under this chapter.

(c) It is not a conflict of interest for the attorney general to defend a person under this chapter and also to prosecute a legal action against that person as required or authorized by law if different assistant attorneys general are assigned the responsibility for each action. (V.A.C.S. Art. 6252-26, Sec. 3(a) (part).)

Sec. 104.005. **SERVICE OF PROCESS OR TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED.** The state is not liable for the defense of an action covered by this chapter or for damages, court costs, or attorney's fees unless:

(1) the attorney general has been served in the case and the state has been given an opportunity to defend the suit; or

(2) the person against whom the action is brought delivers to the attorney general all process served on the person not later than the 10th day after the date of service. (V.A.C.S. Art. 6252-26, Sec. 3(a) (part).)

Sec. 104.006. **SECURITY OR BOND.** In a cause of action defended by the attorney general under this chapter, the attorney general or the individual or estate represented may not be required to advance security for cost or to give bond on appeal or on review by writ of error. (V.A.C.S. Art. 6252-26, Sec. 3(b).)

Sec. 104.007. **FUNDS FOR DEFENSE.** (a) Only funds appropriated from the General Revenue Fund to the attorney general may be used to conduct the defense of an action that the attorney general is required to defend under this chapter.

(b) Conducting the defense of an action covered by this chapter includes investigating, taking depositions, making discovery, preparing for trial, preparing exhibits or other evidence, and participating in actual trial. (V.A.C.S. Art. 6252-26, Sec. 4.)

Sec. 104.008. **NO WAIVER OF DEFENSES.** This chapter does not waive a defense, immunity, or jurisdictional bar available to the state or its officers, employees, or contractors. (V.A.C.S. Art. 6252-26, Sec. 1(b) (part).)

## CHAPTER 105. FRIVOLOUS CLAIM BY STATE AGENCY

Sec. 105.001. **DEFINITIONS**

Sec. 105.002. **RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES**

Sec. 105.003. **MOTION OF FRIVOLOUS CLAIM**

Sec. 105.004. **PAYMENT OF COSTS**

## CHAPTER 105. FRIVOLOUS CLAIM BY STATE AGENCY

Sec. 105.001. **DEFINITIONS.** In this chapter:

(1) "Fees and other expenses" means:

(A) the reasonable expenses of witnesses incurred in preparing to testify or in attending or testifying;

(B) a reasonable fee for the professional services of an expert witness; and

(C) the reasonable costs of a study, analysis, engineering report, test, or other project the court finds to be necessary for the preparation of the party's case.

(2) "Party" means an individual, partnership, corporation, association, or public or private organization other than a state agency.

(3) "State agency" means a board, commission, department, office, or other agency that:

(A) is in the executive branch of state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction. (V.A.C.S. Art. 2226b, Sec. 1.)

Sec. 105.002. **RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES.** A party to a civil suit in a court of this state brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, is

entitled to recover, in addition to all other costs allowed by law or rule, fees, expenses, and reasonable attorney's fees incurred by the party in defending the agency's action if:

- (1) the court finds that the action is frivolous, unreasonable, or without foundation; and
- (2) the action is dismissed or judgment is awarded to the party. (V.A.C.S. Art. 2226b, Secs. 2 (part), 4.)

Sec. 105.003. **MOTION OF FRIVOLOUS CLAIM.** (a) To recover under this chapter, the party must file a written motion alleging that the agency's claim is frivolous, unreasonable, or without foundation. The motion may be filed at any time after the filing of the pleadings in which the agency's cause of action is alleged.

(b) The motion must set forth the facts that justify the party's claim.

(c) The motion must state that if the action is dismissed or judgment is awarded to the party, the party intends to submit a motion to the court to recover fees, expenses, and reasonable attorney's fees. (V.A.C.S. Art. 2226b, Secs. 2 (part), 3.)

Sec. 105.004. **PAYMENT OF COSTS.** The agency shall pay the fees and expenses from funds appropriated for operation of the agency, funds appropriated for the payment of fees and expenses under this chapter, or other funds available for that purpose. (V.A.C.S. Art. 2226b, Sec. 5.)

## CHAPTER 106. DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR, SEX, OR NATIONAL ORIGIN

Sec. 106.001. **PROHIBITED ACTS**

Sec. 106.002. **REMEDIES**

Sec. 106.003. **PENALTIES**

## CHAPTER 106. DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR, SEX, OR NATIONAL ORIGIN

Sec. 106.001. **PROHIBITED ACTS.** (a) An officer or employee of the state or of a political subdivision of the state who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

- (1) refuse to issue to the person a license, permit, or certificate;
- (2) revoke or suspend the person's license, permit, or certificate;
- (3) refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state;
- (4) refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state;
- (5) refuse to grant a benefit to the person;
- (6) impose an unreasonable burden on the person; or
- (7) refuse to award a contract to the person.

(b) This section does not apply to a public school official who is acting under a plan reasonably designed to end discriminatory school practices. (V.A.C.S. Art. 6252-16, Sec. 1.)

Sec. 106.002. **REMEDIES.** (a) If a person has violated or there are reasonable grounds to believe a person is about to violate Section 106.001, the person aggrieved by the violation or threatened violation may sue for preventive relief, including a permanent or temporary injunction, a restraining order, or any other order.

(b) In an action under this section, unless the state is the prevailing party, the court may award the prevailing party reasonable attorney's fees as a part of the costs. The state's liability for costs is the same as that of a private person. (V.A.C.S. Art. 6252-16, Sec. 2.)

Sec. 106.003. **PENALTIES.** (a) A person commits an offense if the person knowingly violates Section 106.001.

- (b) An offense under this section is a misdemeanor punishable by:
- (1) a fine of not more than \$1,000;
  - (2) confinement in the county jail for not more than one year; or
  - (3) both the fine and confinement. (V.A.C.S. Art. 6252-16, Sec. 3.)

[Chapters 107-120 reserved for expansion]

## TITLE 6. MISCELLANEOUS PROVISIONS

### CHAPTER 121. ACKNOWLEDGMENTS AND PROOFS OF WRITTEN INSTRUMENTS

Sec. 121.001. **OFFICERS WHO MAY TAKE ACKNOWLEDGMENTS OR PROOFS**

- Sec. 121.002. CORPORATE ACKNOWLEDGMENTS
- Sec. 121.003. AUTHORITY OF OFFICERS
- Sec. 121.004. METHOD OF ACKNOWLEDGMENT
- Sec. 121.005. PROOF OF IDENTITY OF ACKNOWLEDGING PERSON
- Sec. 121.006. ALTERATION OF AUTHORIZED FORMS; DEFINITION
- Sec. 121.007. FORM FOR ORDINARY CERTIFICATE OF ACKNOWLEDGMENT
- Sec. 121.008. SHORT FORMS FOR CERTIFICATES OF ACKNOWLEDGMENT
- Sec. 121.009. PROOF OF ACKNOWLEDGMENT BY WITNESS
- Sec. 121.010. FORM OF CERTIFICATE FOR PROOF BY WITNESS
- Sec. 121.011. PROOF OF ACKNOWLEDGMENT BY HANDWRITING
- Sec. 121.012. RECORD OF ACKNOWLEDGMENT
- Sec. 121.013. SUBPOENA OF WITNESS; ATTACHMENT
- Sec. 121.014. ACTION FOR DAMAGES

## TITLE 6. MISCELLANEOUS PROVISIONS

### CHAPTER 121. ACKNOWLEDGMENTS AND PROOFS OF WRITTEN INSTRUMENTS

Sec. 121.001. OFFICERS WHO MAY TAKE ACKNOWLEDGMENTS OR PROOFS. (a) An acknowledgment or proof of a written instrument may be taken in this state by:

- (1) a clerk of a district court;
- (2) a judge or clerk of a county court; or
- (3) a notary public.

(b) An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:

- (1) a clerk of a court of record having a seal;
- (2) a commissioner of deeds appointed under the laws of this state; or
- (3) a notary public.

(c) An acknowledgment or proof of a written instrument may be taken outside the United States and its territories by:

- (1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
- (2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or
- (3) a notary public.

(d) A commissioned officer of the United States Armed Forces or of a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse. If an acknowledgment or a proof is taken under this subsection, it is presumed, absent pleading and proof to the contrary, that the commissioned officer who signed was a commissioned officer on the date that the officer signed, and that the acknowledging person was a member of the authorized group of military personnel or spouses. The failure of the commissioned officer to attach an official seal to the certificate of acknowledgment or proof of an instrument does not invalidate the acknowledgment or proof. (V.A.C.S. Art. 6602.)

Sec. 121.002. CORPORATE ACKNOWLEDGMENTS. (a) An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

(b) An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest unless:

- (1) the corporation has 1,000 or fewer shareholders; and
- (2) the officer owns more than one-tenth of one percent of the issued and outstanding stock. (V.A.C.S. Art. 6602a.)

Sec. 121.003. AUTHORITY OF OFFICERS. In a proceeding to prove a written instrument, an officer authorized by this chapter to take an acknowledgment or a proof of a written instrument is also authorized to:

- (1) administer oaths;
- (2) employ and swear interpreters; and
- (3) issue subpoenas. (V.A.C.S. Art. 6616.)

Sec. 121.004. **METHOD OF ACKNOWLEDGMENT.** (a) To acknowledge a written instrument for recording, the grantor or person who executed the instrument must appear before an officer and must state that he executed the instrument for the purposes and consideration expressed in it.

- (b) The officer shall:
  - (1) make a certificate of the acknowledgment;
  - (2) sign the certificate; and
  - (3) seal the certificate with the seal of office. (V.A.C.S. Arts. 6603, 6606.)

Sec. 121.005. **PROOF OF IDENTITY OF ACKNOWLEDGING PERSON.** (a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence on the oath of a credible witness that the acknowledging person is the person who executed the instrument and is described in it.

- (b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:
  - (1) he personally knows the acknowledging person; or
  - (2) evidence of a witness was used to identify the acknowledging person. (V.A.C.S. Art. 6604.)

Sec. 121.006. **ALTERATION OF AUTHORIZED FORMS; DEFINITION.** (a) An acknowledgment form provided by this chapter may be altered as circumstances require. The authorization of a form does not prevent the use of other forms. The marital status or other status of the acknowledging person may be shown after the person's name.

- (b) In an acknowledgment form "acknowledged" means:
  - (1) in the case of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument for the purposes and consideration expressed in it;
  - (2) in the case of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the instrument as the act of the principal for the purposes and consideration expressed in it;
  - (3) in the case of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument as the act of the partnership for the purposes and consideration expressed in it;
  - (4) in the case of a corporation by a corporate officer or agent, that the corporate officer or agent personally appeared before the officer taking the acknowledgment and that the corporate officer or agent acknowledged executing the instrument in the capacity stated, as the act of the corporation, for the purposes and consideration expressed in it; and
  - (5) in the case of a person acknowledging as a public officer, trustee, executor or administrator of an estate, guardian, or other representative, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument by proper authority in the capacity stated and for the purposes and consideration expressed in it. (V.A.C.S. Art. 6607a, Secs. 1 (part), 2, 4.)

Sec. 121.007. **FORM FOR ORDINARY CERTIFICATE OF ACKNOWLEDGMENT.** The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of \_\_\_\_\_  
 "County of \_\_\_\_\_  
 "Before me \_\_\_\_\_ (here insert the name and character of the officer) on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.  
 (Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_." (V.A.C.S. Art. 6607.)

Sec. 121.008. **SHORT FORMS FOR CERTIFICATES OF ACKNOWLEDGMENT.** (a) The forms for certificates of acknowledgment provided by this section may be used as alternatives to other authorized forms. They may be referred to as "statutory forms of acknowledgment."

- (b) Short forms for certificates of acknowledgment include:
  - (1) For a natural person acting in his own right:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(2) For a natural person as principal acting by attorney-in-fact:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(3) For a partnership acting by one or more partners:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(4) For a corporation:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(5) For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_(V.A.C.S. Art. 6607a, Secs. 1 (part), 3.)

Sec. 121.009. PROOF OF ACKNOWLEDGMENT BY WITNESS. (a) To prove a written instrument for recording, at least one of the witnesses who signed the instrument must personally appear before an officer who is authorized by this chapter to take acknowledgments or proofs and must swear:

(1) either that he saw the grantor or person who executed the instrument sign it or that that person acknowledged in the presence of the witness that he executed the instrument for the purposes and consideration expressed in it; and

(2) that he signed the instrument at the request of the grantor or person who executed the instrument.

(b) The officer must make a certificate of the testimony of the witness and must sign and officially seal the certificate.

(c) The officer may take the testimony of a witness only if the officer personally knows or has satisfactory evidence on the oath of a credible witness that the individual testifying is the person who signed the instrument as a witness. If evidence is used to identify the witness who signed the instrument, the officer must note the use of the evidence in the certificate of acknowledgment. (V.A.C.S. Arts. 6609, 6610.)

Sec. 121.010. FORM OF CERTIFICATE FOR PROOF BY WITNESS. When the execution of a written instrument is proved by a witness, the certificate of the officer must be substantially as follows:



"The State of \_\_\_\_\_,  
 "County of \_\_\_\_\_  
 "Before me, \_\_\_\_\_ (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw \_\_\_\_\_, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_." (V.A.C.S. Art. 6611.)

Sec. 121.011. **PROOF OF ACKNOWLEDGMENT BY HANDWRITING.** (a) The execution of an instrument may be established for recording by proof of the handwriting of persons who signed the instrument only if:

- (1) the grantor of the instrument and all of the witnesses are dead;
- (2) the grantor and all of the witnesses are not residents of this state;
- (3) the residences of the grantor and the witnesses are unknown to the person seeking to prove the instrument and cannot be ascertained;
- (4) the witnesses have become legally incompetent to testify; or
- (5) the grantor of the instrument refuses to acknowledge the execution of the instrument and all of the witnesses are dead, not residents of this state, or legally incompetent or their places of residence are unknown.

(b) If the grantor or person who executed the instrument signed his name to the instrument, its execution must be proved by evidence of the handwriting of that person and at least one witness who signed the instrument. If the grantor or person who executed the instrument signed the instrument by making his mark, its execution must be proved by the handwriting of at least two of the witnesses who signed the instrument.

(c) Evidence taken for proof of handwriting must give the residence of the testifying witness. A testifying witness must have known the person whose handwriting is being proved and must be well acquainted with the handwriting in question and recognize it as genuine.

(d) Evidence offered for proof of handwriting must be given in writing by the deposition or affidavit of two or more disinterested persons. The evidence must satisfactorily prove to the officer each of the requirements provided by this section. The officer taking the proof must certify the witnesses' testimony. The officer must sign, officially seal, and attach this certificate to the instrument with the depositions or affidavits of the witnesses. (V.A.C.S. Arts. 6612, 6613, 6614, 6615.)

Sec. 121.012. **RECORD OF ACKNOWLEDGMENT.** (a) An officer authorized by law to take an acknowledgment or proof of a written instrument required or permitted by law to be recorded must enter in a well-bound book and officially sign a short statement of each acknowledgment or proof. The statement must contain the date that the acknowledgment or proof was taken, the date of the instrument, and the names of the grantor and grantee of the instrument.

(b) If the execution of the instrument is acknowledged by the grantor of the instrument, the statement must also contain:

- (1) the grantor's known or alleged residence;
- (2) whether the grantor is personally known to the officer; and
- (3) if the grantor is unknown to the officer, the name and residence of the person who introduced the grantor to the officer, if any.

(c) If the execution of the instrument is proved by a witness who signed the instrument, the statement must also contain:

- (1) the name of the witness;
- (2) the known or alleged residence of the witness;
- (3) whether the witness is personally known to the officer; and
- (4) if the witness is unknown to the officer, the name and known or alleged residence of the person who introduced the witness to the officer, if any.

(d) If land is charged or conveyed by the instrument, the statement must also contain:

- (1) the name of the original grantee; and
- (2) the name of the county in which the land is located.

(e) The statements of acknowledgment recorded by the officer are original public records, open for public inspection and examination at all reasonable times. The officer must deliver the book to his successor in office. (V.A.C.S. Arts. 6619, 6620, 6621, 6622.)

Sec. 121.013. SUBPOENA OF WITNESS; ATTACHMENT. (a) On the sworn application of a person interested in the proof of an instrument required or permitted by law to be recorded, stating that a witness to the instrument refuses to appear and testify regarding the execution of the instrument and that the instrument cannot be proven without the evidence of the witness, an officer authorized to take proofs of instruments shall issue a subpoena requiring the witness to appear before the officer and testify about the execution of the instrument.

(b) If the witness fails to obey the subpoena, the officer has the same powers to enforce the attendance and compel the answers of the witness as does a district judge. Attachment may not be issued, however, unless the witness receives or is tendered the same compensation that is made to witnesses in other cases. An officer may not require the witness to leave his county of residence, but if the witness is temporarily present in the county where the execution of the instrument is sought to be proven for registration, he may be required to appear. (V.A.C.S. Arts. 6617, 6618.)

Sec. 121.014. ACTION FOR DAMAGES. A person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer. (V.A.C.S. Art. 6623.)

## CHAPTER 122. JUROR'S RIGHT TO REEMPLOYMENT

Sec. 122.001. JUROR'S RIGHT TO REEMPLOYMENT; NOTICE OF INTENT TO RETURN

Sec. 122.002. DAMAGES AND ATTORNEY'S FEES

Sec. 122.003. DEFENSE

## CHAPTER 122. JUROR'S RIGHT TO REEMPLOYMENT

Sec. 122.001. JUROR'S RIGHT TO REEMPLOYMENT; NOTICE OF INTENT TO RETURN. (a) A private employer may not terminate the employment of a permanent employee because the employee serves as a juror.

(b) An employee whose employment is terminated in violation of this section is entitled to return to the same employment that the employee held when summoned for jury service if the employee, as soon as practical after release from jury service, gives the employer actual notice that the employee intends to return. (V.A.C.S. Art. 5207b, Secs. (a), (b).)

Sec. 122.002. DAMAGES AND ATTORNEY'S FEES. (a) A person who is injured because of a violation of this chapter is entitled to damages, but the damages may not exceed an amount equal to six months' compensation at the rate at which the person was compensated when summoned for jury service.

(b) In addition to damages, the injured person is entitled to reasonable attorney's fees in an amount approved by the court. (V.A.C.S. Art. 5207b, Sec. (c).)

Sec. 122.003. DEFENSE. It is a defense to an action brought under this chapter that the employer's circumstances changed while the employee served as a juror so that reemployment was impossible or unreasonable. (V.A.C.S. Art. 5207b, Sec. (d).)

## CHAPTER 123. INTERCEPTION OF COMMUNICATION

Sec. 123.001. DEFINITIONS

Sec. 123.002. CAUSE OF ACTION

Sec. 123.003. DEFENSE

Sec. 123.004. DAMAGES

## CHAPTER 123. INTERCEPTION OF COMMUNICATION

Sec. 123.001. DEFINITIONS. In this chapter:

(1) "Communication" means speech uttered by a person or information including speech that is transmitted in whole or in part with the aid of a wire or cable.

(2) "Interception" means the aural acquisition of the contents of a communication through the use of an electronic, mechanical, or other device that is made without the consent of a party to the communication, but does not include the ordinary use of:

(A) a telephone or telegraph instrument or facility or telephone and telegraph equipment;

(B) a hearing aid designed to correct subnormal hearing to not better than normal;

(C) a radio, television, or other wireless receiver; or

(D) a cable system that relays a public wireless broadcast from a common antenna to a receiver. (V.A.C.S. Art. 9019, Sec. 1.)

Sec. 123.002. CAUSE OF ACTION. (a) A party to a communication may sue a person who:

(1) intercepts, attempts to intercept, or employs or obtains another to intercept or attempt to intercept the communication;

(2) uses or divulges information that he knows or reasonably should know was obtained by interception of the communication; or

(3) as a landlord, building operator, or communication common carrier, either personally or through an agent or employee, aids or knowingly permits interception or attempted interception of the communication.

(b) This section does not apply to a party to a communication if an interception or attempted interception of the communication is authorized by Title 18, United States Code, Section 2516. (V.A.C.S. Art. 9019, Secs. 2(a), (d).)

Sec. 123.003. DEFENSE. (a) A switchboard operator or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire communication may intercept, disclose, or use a communication in the normal course of employment if engaged in an activity that is necessary to service or for the protection of the carrier's rights or property. A communication common carrier may not use service observation or random monitoring except for mechanical or service quality control checks.

(b) It is a defense to an action under Section 123.002 that an interception, disclosure, or use of a communication is permitted by this section.

(c) A defendant must establish by a preponderance of the evidence a defense raised under this section. (V.A.C.S. Art. 9019, Sec. 2(c).)

Sec. 123.004. DAMAGES. A person who establishes a cause of action under this chapter is entitled to:

(1) an injunction prohibiting a further interception, attempted interception, or divulgence or use of information obtained by an interception;

(2) statutory damages of \$1,000;

(3) all actual damages in excess of \$1,000;

(4) punitive damages in an amount determined by the court or jury; and

(5) reasonable attorney's fees and costs. (V.A.C.S. Art. 9019, Sec. 2(b).)

## CHAPTER 124. PRIVILEGE TO INVESTIGATE THEFT

Sec. 124.001. DETENTION

### CHAPTER 124. PRIVILEGE TO INVESTIGATE THEFT

Sec. 124.001. DETENTION. A person who reasonably believes that another has stolen or is attempting to steal property is privileged to detain that person in a reasonable manner and for a reasonable time to investigate ownership of the property. (V.A.C.S. Art. 1d.)

## CHAPTER 125. COMMON AND PUBLIC NUISANCES

### SUBCHAPTER A. SUIT TO ABATE CERTAIN COMMON NUISANCES

Sec. 125.001. COMMON NUISANCE

Sec. 125.002. SUIT TO ABATE COMMON NUISANCES; BOND

Sec. 125.003. SUIT ON BOND Sec. 125.004. EVIDENCE

[Sections 125.005-125.020 reserved for expansion]

### SUBCHAPTER B. SUIT TO ABATE CERTAIN PUBLIC NUISANCES

Sec. 125.021. PUBLIC NUISANCE

Sec. 125.022. SUIT TO ABATE PUBLIC NUISANCE

## CHAPTER 125. COMMON AND PUBLIC NUISANCES

### SUBCHAPTER A. SUIT TO ABATE CERTAIN COMMON NUISANCES

Sec. 125.001. COMMON NUISANCE. A person who knowingly maintains a place to which persons habitually go for the purpose of prostitution or gambling in violation of the Penal Code maintains a common nuisance. (V.A.C.S. Art. 4664 (part).)

Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) If a county or district attorney or the attorney general has reliable information that a common nuisance exists, the county or district attorney or the attorney general shall sue the person maintaining the

nuisance for an injunction to abate and enjoin the nuisance. The suit is in the name of the state and shall be filed in the county in which the nuisance is alleged to exist.

(b) If judgment is in favor of the state, the court shall grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining the nuisance. The judgment must order that the place where the nuisance exists be closed for one year after the date of judgment unless the defendant or the owner, lessee, or tenant of the property posts bond.

(c) The bond must:

- (1) be payable to the state at the county seat of the county in which the nuisance exists;
- (2) be in the penal sum of not less than \$1,000 nor more than \$5,000;
- (3) have sufficient sureties approved by the court; and
- (4) be conditioned that the property will not be used or permitted to be used for prostitution or gambling in violation of the Penal Code. (V.A.C.S. Art. 4666 (part).)

Sec. 125.003. **SUIT ON BOND.** If a condition of a bond filed under this subchapter is violated, the district or county attorney of the county in which the property is located shall sue on the bond in the name of the state. In that suit, the whole sum may be recovered as a penalty. (V.A.C.S. Art. 4666 (part).)

Sec. 125.004. **EVIDENCE.** (a) Proof that prostitution or gambling in violation of the Penal Code is frequently committed at the place involved is prima facie evidence that the proprietor knowingly permitted the act.

(b) Evidence that persons have been convicted of gambling or committing prostitution in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and judgments of those convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.

(c) Evidence of the general reputation of the place involved is admissible to show the existence of the nuisance. (V.A.C.S. Art. 4665.)

[Sections 125.005-125.020 reserved for expansion]

## SUBCHAPTER B. SUIT TO ABATE CERTAIN PUBLIC NUISANCES

Sec. 125.021. **PUBLIC NUISANCE.** The habitual use or the threatened or contemplated habitual use of any place for any of the following purposes is a public nuisance:

- (1) gambling, gambling promotion, or communicating gambling information prohibited by law;
- (2) promotion or aggravated promotion of prostitution;
- (3) compelling prostitution;
- (4) commercial manufacture, commercial distribution, or commercial exhibition of obscene material;
- (5) commercial exhibition of live dances or other acts depicting real or simulated sexual intercourse or deviate sexual intercourse; or
- (6) engaging in a voluntary fight between a man and a bull if the fight is for a thing of value or a championship, if a thing of value is wagered on the fight, or if an admission fee for the fight is directly or indirectly charged, as prohibited by law. (V.A.C.S. Art. 4667(a) (part).)

Sec. 125.022. **SUIT TO ABATE PUBLIC NUISANCE.** (a) A district, county, or city attorney, the attorney general, or a citizen of the state may sue to enjoin the use of a place for purposes constituting a nuisance under this subchapter.

(b) If the suit is brought by the state, the petition does not require verification. If the suit is brought by a citizen, the citizen is not required to show personal injury.

(c) Any person who uses, is about to use, or is a party to the use of premises for purposes constituting a nuisance under this subchapter may be made a defendant in the suit. (V.A.C.S. Arts. 4667(a) (part), (b).)

## CHAPTER 126. CHURCHES

### SUBCHAPTER A. RECEIVERSHIP FOR DEFUNCT CHURCH

Sec. 126.001. **DEFINITION**

Sec. 126.002. **APPOINTMENT OF RECEIVER**

Sec. 126.003. **QUALIFICATIONS**

Sec. 126.004. **POWERS AND DUTIES**

[Sections 126.005-126.010 reserved for expansion]

## SUBCHAPTER B. TRUSTEES

Sec. 126.011. RECORD

Sec. 126.012. CERTIFIED COPY TO COURT

Sec. 126.013. CHANGE IN TRUSTEES

## CHAPTER 126. CHURCHES

## SUBCHAPTER A. RECEIVERSHIP FOR DEFUNCT CHURCH

Sec. 126.001. DEFINITION. In this subchapter, "church" means a local congregation of believers in Christ, but does not include a denomination or communion as a whole. (V.A.C.S. Art. 2293a, Sec. 5.)

Sec. 126.002. APPOINTMENT OF RECEIVER. (a) The judge of a district court or another court of jurisdiction shall on application appoint a receiver for any church that:

(1) formerly maintained regular forms of work and worship, such as Bible school, communion, and preaching, in a given community at regular intervals; and

(2) has ceased to function as a church in those or similar capacities for at least one year.

(b) The judge shall hear and determine the application in term or in vacation.

(c) Before appointing a receiver, the judge shall apply to the secretary of state for a certified copy of the record of church trustees required by this chapter. (V.A.C.S. Art. 2293a, Secs. 1, 6; Art. 4331a (part).)

Sec. 126.003. QUALIFICATIONS. (a) To be appointed receiver for the church, a person must be:

(1) a member of an active church of like faith and order; or

(2) a recognized missionary or ecclesiastical body of like faith and order, denomination, or communion.

(b) If the denomination or communion of like faith and order has a state missionary society or an organization similarly formed and named and the society or organization is authorized to act as receiver or trustee for the denomination or communion, the court shall appoint the society or organization to serve as receiver. (V.A.C.S. Art. 2294a.)

Sec. 126.004. POWERS AND DUTIES. (a) The receiver shall take charge of all property belonging to the church and administer that property under the direction of the court for the best interests of the church.

(b) If necessary to preserve the property, the receiver may sell it under order of the court.

(c) The court shall order the public or private sale of property belonging to a church that may not be revived or reorganized within a reasonable time. The proceeds of the sale shall be delivered to the receiver, who shall use them for a church, denomination, communion, or organization of like faith and order. (V.A.C.S. Art. 2297a.)

[Sections 126.005-126.010 reserved for expansion]

## SUBCHAPTER B. TRUSTEES

Sec. 126.011. RECORD. (a) On receipt of \$2.50, the secretary of state shall record the names of all trustees appointed by any state organization of a church communion in this state.

(b) The appointment must be duly authenticated by an officer authorized to acknowledge deeds in this state.

(c) The secretary of state shall keep the record in a well-bound book in the secretary of state's office. (V.A.C.S. Art. 4331a (part).)

Sec. 126.012. CERTIFIED COPY TO COURT. (a) The secretary of state shall furnish a certified copy of the appointments to any court in this state on application by the judge or court clerk.

(b) If the certified copy is used in a proceeding, \$1.50 shall be taxed as costs to be collected and paid as other costs. (V.A.C.S. Art. 4331a (part).)

Sec. 126.013. CHANGE IN TRUSTEES. This chapter does not affect a communion's right to change, appoint, or elect its trustees. (V.A.C.S. Art. 4331a (part).)

## CHAPTER 127. INDEMNITY PROVISIONS IN CERTAIN MINERAL AGREEMENTS

Sec. 127.001. DEFINITIONS

Sec. 127.002. FINDING; AGREEMENTS AGAINST PUBLIC POLICY

Sec. 127.003. AGREEMENT VOID AND UNENFORCEABLE

Sec. 127.004. EXCLUSIONS

Sec. 127.005. INSURANCE COVERAGE

Sec. 127.006. INSURANCE CONTRACT; WORKERS' COMPENSATION

Sec. 127.007. OWNER OF SURFACE ESTATE

Sec. 127.008. PARTIES RESPONSIBLE

## CHAPTER 127. INDEMNITY PROVISIONS IN CERTAIN MINERAL AGREEMENTS

Sec. 127.001. DEFINITIONS. In this chapter:

(1) "Agreement pertaining to a well for oil, gas, or water or to a mine for a mineral" means:

(A) a written or oral agreement or understanding concerning the rendering of well or mine services; or

(B) an agreement to perform a part of those services or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with the services.

(2) "Well or mine service" includes:

(A) drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, or otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, other minerals or water; and

(B) designing, excavating, constructing, improving, or otherwise rendering services in connection with a mine shaft, drift, or other structure intended for use in exploring for or producing a mineral.

(3) "Wild well" means a well from which the escape of oil or gas is not intended and cannot be controlled by equipment used in normal drilling practice. (V.A.C.S. Art. 2212b, Secs. 3, 4(a) (part).)

Sec. 127.002. FINDING; AGREEMENTS AGAINST PUBLIC POLICY. (a) The legislature finds that an inequity is fostered on certain contractors by the indemnity provisions in some agreements pertaining to wells for oil, gas, or water or to mines for other minerals.

(b) Certain agreements that provide for indemnification of a negligent indemnitee are against the public policy of this state. (V.A.C.S. Art. 2212b, Sec. 1.)

Sec. 127.003. AGREEMENT VOID AND UNENFORCEABLE. (a) Except as otherwise provided by this chapter, a covenant, promise, agreement, or understanding contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral is void if it purports to indemnify a person against loss or liability for damage that:

(1) is caused by or results from the sole or concurrent negligence of the indemnitee, his agent or employee, or an individual contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property injury; or

(C) any other loss, damage, or expense that arises from personal injury, death, or property injury. (V.A.C.S. Art. 2212b, Sec. 2.)

Sec. 127.004. EXCLUSIONS. This chapter does not apply to loss or liability for damages or an expense arising from:

(1) personal injury, death, or property injury that results from radioactivity;

(2) property injury that results from pollution;

(3) property injury that results from reservoir or underground damage; or

(4) personal injury, death, or property injury that results from the performance of services to control a wild well to protect the safety of the general public or to prevent depletion of vital natural resources. (V.A.C.S. Art. 2212b, Sec. 4(a) (part).)

Sec. 127.005. INSURANCE COVERAGE. (a) This chapter does not apply to an agreement that provides for indemnity with respect to claims for personal injury or death to the indemnitor's employees or agents or to the employees or agents of the indemnitor's subcontractors if the parties agree in writing that the indemnity obligation will be supported by available liability insurance coverage to be furnished by the indemnitor.

(b) The indemnity obligation is limited to the extent of the coverage and dollar limits of insurance the indemnitor has agreed to furnish.

(c) The amount of insurance required may not exceed 12 times the state's basic limits for personal injury, as approved by the State Board of Insurance in accordance with Article 5.15, Insurance Code. (V.A.C.S. Art. 2212b, Sec. 4(c).)

Sec. 127.006. **INSURANCE CONTRACT; WORKERS' COMPENSATION.** This chapter does not affect:

(1) the validity of an insurance contract; or

(2) a benefit conferred by the workers' compensation statutes of this state. (V.A.C.S. Art. 2212b, Sec. 4(b) (part).)

Sec. 127.007. **OWNER OF SURFACE ESTATE.** This chapter does not deprive an owner of the surface estate of the right to secure indemnity from a lessee, an operator, a contractor, or other person conducting operations for the exploration or production of minerals of the owner's land. (V.A.C.S. Art. 2212b, Sec. 4(b) (part).)

Sec. 127.008. **PARTIES RESPONSIBLE.** Each party to an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral is responsible for the results of his own actions and for the actions of those persons over whom he exercises control. (V.A.C.S. Art. 2212b, Sec. 5.)

## CHAPTER 128. UNAUTHORIZED USE OF TELEVISION DECODING AND INTERCEPTION DEVICES

Sec. 128.001. **ACTION TO ENJOIN VIOLATION**

Sec. 128.002. **ATTORNEY'S FEES; DAMAGES**

## CHAPTER 128. UNAUTHORIZED USE OF TELEVISION DECODING AND INTERCEPTION DEVICES

Sec. 128.001. **ACTION TO ENJOIN VIOLATION.** (a) A provider of a subscription television service may bring an action to enjoin a violation or a threatened violation of Section 31.12 or 31.13, Penal Code. The plaintiff is entitled to an injunction on a showing that a violation has occurred or will occur.

(b) The plaintiff does not need to show an irreparable injury, an inadequate remedy at law, and a probability of recovery to prove a prima facie right to the injunction. (Sec. 3(a), Ch. 29, Acts 67th Legis., Reg. Sess., 1981.)

Sec. 128.002. **ATTORNEY'S FEES; DAMAGES.** The court shall award reasonable attorney's fees and three times actual damages to a prevailing plaintiff in an action under this chapter. (Sec. 3(b), Ch. 29, Acts 67th Legis., Reg. Sess., 1981.)

## CHAPTER 129. AGE OF MAJORITY

Sec. 129.001. **AGE OF MAJORITY**

Sec. 129.002. **RIGHTS, PRIVILEGES, OR OBLIGATIONS**

Sec. 129.003. **ALCOHOLIC BEVERAGE CODE PREVAILS**

## CHAPTER 129. AGE OF MAJORITY

Sec. 129.001. **AGE OF MAJORITY.** The age of majority in this state is 18 years. (V.A.C.S. Art. 5923b, Sec. 1.)

Sec. 129.002. **RIGHTS, PRIVILEGES, OR OBLIGATIONS.** A law, rule, or ordinance enacted or adopted before August 27, 1973, that extends a right, privilege, or obligation to an individual on the basis of a minimum age of 19, 20, or 21 years shall be interpreted as prescribing a minimum age of 18 years. (V.A.C.S. Art. 5923b, Sec. 2.)

Sec. 129.003. **ALCOHOLIC BEVERAGE CODE PREVAILS.** The minimum age provisions of the Alcoholic Beverage Code prevail to the extent of any conflict with this chapter. (V.A.C.S. Art. 5923b, Sec. 4.)

**SECTION 2. CONFORMING AMENDMENT.** Sections 1, 2, and 3, Chapter 195, Acts of the 47th Legislature, Regular Session, 1941 (Article 1970-325, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. The [judge of the County Court at Law of any county having a County Court at Law; is authorized to appoint an official interpreter for such County Court at Law. And the] County Commissioners shall by resolution fix the salary of an [said] official interpreter appointed under Section 21.031, Civil Practice and Remedies Code, and provide for the payment of such salary [; and shall prescribe the duties of such official interpreter.

"[Section 2. The judge of the County Court at Law shall have authority to terminate such employment of such interpreter at any time.

"[Section 3. The official interpreter so appointed by the judge of the County Court at Law shall take the constitutional oath of office, and in addition thereto shall make oath that as such official interpreter he will faithfully interpret all testimony given in the

County Court at Law, and which oath shall suffice for his service as official interpreter of such court in all cases before such court during his term of office].”

**SECTION 3. CONFORMING AMENDMENT.** Chapter 7, Probate Code, is amended by adding Section 233A to read as follows:

*“Section 233A. SUITS BY EXECUTORS, ADMINISTRATORS, OR GUARDIANS. Suits for the recovery of personal property, debts, or damages and suits for title or possession of lands or for any right attached to or growing out of the same or for injury or damage done thereto may be instituted by executors, administrators, or guardians appointed in this state; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.” (V.A.C.S. Art. 1981.)*

**SECTION 4. CONFORMING AMENDMENT.** Section 12, Probate Code, is amended by adding Subsection (c) to read as follows:

*“(c) Suit for Fiduciary. No security for costs shall be required of an executor, administrator, or guardian appointed by a court of this state in any suit brought by him in his fiduciary character.” (V.A.C.S. Art. 2072 (part).)*

**SECTION 5. CONFORMING AMENDMENT.** Section 1, Chapter 653, Acts of the 65th Legislature, Regular Session, 1977 (Article 2372h-7, Vernon's Texas Civil Statutes), is amended to read as follows:

*“Section 1. A county may insure such of its officers and employees, including county and precinct peace officers as may be designated by the county commissioners court, against liability arising from the performance of official duties or duties of employment by purchasing policies of liability insurance from an insurer authorized to do business in this state. The State Board of Insurance shall promulgate rules and set rates to implement this section.”*

**SECTION 6. CONFORMING AMENDMENT.** Sections 1 and 2, Chapter 323, Acts of the 54th Legislature, Regular Session, 1955 (Article 3737d-1, Vernon's Texas Civil Statutes), are amended to read as follows:

*“Section 1. An interpreter appointed under Subchapter B, Chapter 21, Civil Practice and Remedies Code, [In any county, which is a part of two (2) or more Judicial Districts and in which there are two (2) or more District Courts, having regular terms, one (1) county of said district bordering on the International Boundary between the United States and the Republic of Mexico, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, which said county forms a part of a Judicial District composed of four (4) counties, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, and which county has three (3) or more District Courts or Judicial Districts wholly within said county, or in any county bordering on the Gulf of Mexico, and which said county has four (4) or more District Courts or Judicial Districts of which two (2) or more are wholly within said county, the Commissioners Court of said county, upon request of the District Judge, or District Judges, after determination by said Judges of the need therefor, shall appoint such court interpreters on a full or part-time basis as may be necessary to properly carry out the function of said courts, that such interpreters shall be well versed in and competent to speak the Spanish language, as well as the English language, and] shall [each] receive a salary as fixed by the Commissioners Court of said county, [but not to exceed Four Thousand, Eight Hundred Dollars (\$4,800) per year,] payable in equal monthly payments, out of the General Fund of such county.*

*“[Section 2. The Commissioners Court shall appoint such interpreter or interpreters as shall be designated by the District Judges requesting such appointment.]”*

**SECTION 7. CONFORMING AMENDMENT.** Chapter 35, Business & Commerce Code, is amended by adding Section 35.42 to read as follows:

*“Section 35.42. DELIVERY OF UNSOLICITED GOODS. (a) Unless otherwise agreed, if unsolicited goods are delivered to a person, the person:*

*“(1) is entitled to refuse to accept delivery of the goods; and*

*“(2) is not required to return the goods to the sender.*

*“(b) If unsolicited goods are either addressed to or intended for the recipient, the goods are considered a gift to the recipient, who may use them or dispose of them in any manner without obligation to the sender.*

*“(c) Unsolicited goods received due to a bona fide mistake must be returned, but the burden of proof of the error is on the sender.*

*“(d) This section does not apply to goods substituted for goods ordered or solicited by the recipient.” (V.A.C.S. Art. 29c-1.)*



**SECTION 8. CONFORMING AMENDMENT.** Chapter 16, Penal Code, is amended by adding Section 16.021 to read as follows:

*"Section 16.021. ILLEGAL INTERCEPTION. (a) In this section, 'communication' and 'interception' have the same meanings as are given those terms in Section 123.001, Civil Practice and Remedies Code.*

*"(b) A person, including a landlord, building operator, or employee of a communication common carrier, commits an offense if the person knowingly aids in or permits an interception or attempted interception.*

*"(c) It is a defense to prosecution under this section that the interception is authorized by state or federal law.*

*"(d) An offense under this section is a Class A misdemeanor, unless the actor has been previously convicted under this section, in which event the offense is a felony of the third degree."* (V.A.C.S. Art. 9019, Sec. 3.)

**SECTION 9. REPEALER.** The following laws are repealed:

(1) The following articles and acts as compiled in Vernon's Texas Civil Statutes: 1, 1a, 1b, 1d, 29c-1, 275, 276, 277, 278, 279, 279a, 281, 282, 287, 288, 290, 291, 300, 301, 302, 320c, 941, 960, 1070.1, 1840-A, 1975, 1976, 1981, 1982, 1986, 1987, 1991, 1995, 1996, 2027, 2028, 2029, 2030, 2031b, 2032, 2033, 2033a, 2033b, 2033c, 2039a, 2039b, 2040, 2041a, 2041b, 2072, 2072a, 2088, 2090, 2168a, 2212, 2212a, 2212b, 2214, 2218a, 2218b, 2223, 2224, 2226, 2226a, 2226b, 2248, 2249, 2249a, 2250, 2251, 2255, 2276, 2276a, 2286a, 2287, 2290, 2293, 2293a, 2294, 2294a, 2295, 2296, 2297, 2297a, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320a, 2320b, 2320c, 2328b-5, 2328b-6, 2390, 2391, 2392, 2393, 2451, 2454, 2455, 2455-1, 2460, 2524-1, 3708, 3710, 3712a, 3717, 3733, 3735, 3737h, 3746, 3748, 3757, 3769a, 3769b, 3773, 3775, 3785, 3786, 3787, 3792, 3798, 3799, 3799a, 3800, 3805, 3806, 3807, 3816, 3817, 3818, 3819, 3820, 3824, 3825, 3826, 3827, 3827a, 3829, 3830, 4076, 4084, 4093, 4096, 4099, 4331a, 4476-5c, 4590-3, 4642, 4643, 4644, 4645, 4646, 4646a, 4656, 4660, 4662, 4663, 4664, 4665, 4666, 4667, 4671, 4672, 4673, 4674, 4675, 4675a, 4676, 4677, 4678, 5207b, 5430, 5431, 5432, 5433, 5433a, 5507, 5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515, 5516, 5517, 5518, 5519, 5519a, 5520, 5522, 5523a, 5523b, 5524, 5525, 5526, 5526a, 5526b, 5527, 5528, 5529, 5530, 5531, 5532, 5533, 5534, 5535, 5536, 5536a, 5537, 5538, 5539, 5539a, 5539b, 5539c, 5539d, 5542, 5543, 5544, 5545, 5546, 5923b, 6252-16, 6252-19, 6252-19b, 6252-25, 6252-26, 6253, 6257, 6582, 6583, 6584, 6585, 6586, 6587, 6588, 6589, 6602, 6602a, 6603, 6604, 6606, 6607, 6607a, 6609, 6610, 6611, 6612, 6613, 6614, 6615, 6616, 6617, 6618, 6619, 6620, 6621, 6622, 6623, 6662, 6701b, 6840, 6844, 6846, 6847, 6848, 6858, 9019, 9207;

(2) Section 65.42, Education Code; and

(3) Section 3, Chapter 29, Acts of the 67th Legislature, Regular Session, 1981.

**SECTION 10. LEGISLATIVE INTENT.** This Act is enacted pursuant to Article III, Section 43, of the Texas Constitution. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

**SECTION 11. EFFECTIVE DATE.** This Act takes effect September 1, 1985.

**SECTION 12. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 16, 1985, by a viva-voce vote; passed the House on May 17, 1985, by a non-record vote.

Filed: June 16, 1985, without signature.

Effective: September 1, 1985