

## CHAPTER 756

H.B. No. 517

AN ACT

relating to the creation of municipal courts of record in Arlington.

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

SECTION 1. Chapter 30, Government Code, is amended by adding Subchapter N to read as follows:

## SUBCHAPTER N. ARLINGTON

*Sec. 30.421. APPLICATION. This subchapter applies to the City of Arlington.**Sec. 30.422. CREATION. The governing body of the city may by ordinance create a municipal court of record to be known as the "City of Arlington Municipal Court." The governing body may determine the number of municipal courts of record that are required to dispose of the cases arising in the city and may establish as many as are needed.**Sec. 30.423. APPLICATION OF OTHER LAWS. The general law regarding municipal courts, the general law regarding justice courts on matters not covered by the law regarding municipal courts, and any charter provision or ordinance of the city relating to the municipal court apply to a municipal court of record unless the law, charter provision, or ordinance is in conflict or inconsistent with this subchapter.**Sec. 30.424. JUDGE. (a) A municipal court of record is presided over by a municipal judge.**(b) A municipal judge is elected by the qualified voters of the city for a term of two years unless the city by charter amendment provides for a four-year term as provided by Article XI, Section 11, of the Texas Constitution.**(c) A vacancy in the office of judge is filled by appointment of the governing body of the city, and the person appointed serves until the next regular municipal election, at which time his successor shall be elected. An appointee may succeed himself.**(d) A municipal judge must be a licensed attorney in good standing in this state. The judge must be a citizen of the United States and of this state but need not be a resident of the city. The judge shall devote as much time to the office as it requires.**(e) The judge shall take judicial notice of the city ordinances.**(f) If there is more than one municipal judge in the city, the governing body of the city shall appoint one of the judges to be the presiding municipal judge. The judges may exchange benches and may sit and act for each other in any proceeding pending in the courts. An act performed by any of the municipal judges is binding on all parties to the proceeding.**(g) A municipal judge is entitled to a salary from the city, the amount of which is determined by the governing body of the city. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.**Sec. 30.425. CLERK; OTHER PERSONNEL. (a) The governing body of the city shall provide for the selection of a clerk and deputy clerks of the municipal courts. The clerk and the deputies shall keep the records of the municipal court of record, issue process, administer oaths on complaints, and generally perform the duties for the courts that a clerk of a county court at law exercising criminal jurisdiction performs for that court.**(b) The governing body of the city shall provide deputy clerks, warrant officers, and other personnel as needed for the proper operation of the courts.**(c) The clerk and other court personnel shall perform their duties as provided by city ordinance.**Sec. 30.426. COURT REPORTER. (a) The city shall provide a court reporter for the purpose of preserving a record in cases tried before the municipal court of record. The clerk of the court shall appoint the court reporter, who must meet the qualifications provided by law for official court reporters. The governing body of the city shall set the compensation of the court reporter.**(b) The court reporter or deputy court reporter may preserve the record through written notes, transcribing equipment, recording equipment, or any combination of*

these methods. The court reporter may transcribe the record from recording equipment tapes preserved by the court reporter or preserved by the deputy court reporter. The reporter is not required to record testimony in a case in which neither the defendant, the prosecutor, nor the judge demands it.

*Sec. 30.427. APPEAL.* (a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record as provided by this subchapter. The county criminal courts of Tarrant County have jurisdiction over an appeal.

(b) The appellate court shall determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the defendant's motion for new trial and that are presented in the transcript and statement of facts prepared from the municipal court of record proceedings leading to the conviction. An appeal from the municipal court of record may not be by trial de novo.

(c) To perfect an appeal, the defendant must file a written motion for new trial not later than the 10th day after the date on which judgment is rendered. The motion must set forth the points of error of which the defendant complains. A point of error that is not set forth in the motion is waived. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may for good cause extend the time for filing or amending. If the court does not act on the motion before the expiration of the 20 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

(d) To perfect an appeal, the defendant must also give notice of the appeal. If the defendant requests a hearing on the motion, the defendant may give the notice of appeal orally in open court on the overruling of the motion. Otherwise, the defendant must give a written notice of appeal and must file the notice with the court not later than the 10th day after the date on which the motion is overruled.

*Sec. 30.428. APPEAL BOND; RECORD ON APPEAL.* (a) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.

(b) The appeal bond must be in the amount of \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. The bond must state that the defendant was convicted in the case and has appealed, and it must be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

(c) The record on appeal consists of a transcript and, if necessary to the appeal, a statement of facts.

*Sec. 30.429. TRANSCRIPT; BILLS OF EXCEPTION.* (a) On the written request of the defendant, the clerk of the municipal court of record shall prepare under his hand and the seal of the court the transcript of the proceedings in the municipal court of record. The transcript must include copies of:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict in a jury trial;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) written motions and pleas;
- (8) written orders of the court; and
- (9) any bills of exception filed with the court.

(b) The clerk may include in the transcript additional portions of the proceedings in the court if instructed in writing by the defendant or the prosecuting attorney.

(c) *Either party may include bills of exception in the transcript subject to the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of appeals, except that the bills of exception must be filed with the clerk not later than the 60th day after the date on which the notice of appeal is given or filed.*

**Sec. 30.430. STATEMENT OF FACTS.** (a) *A statement of facts included in the record on appeal must contain:*

(1) *a transcript of all or part of the municipal court of record proceedings that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if the transcription is requested by the defendant;*

(2) *a brief statement of the facts of the case proven at trial as agreed to by the defendant and the prosecuting attorney; or*

(3) *a partial transcription and the agreed statement of the facts of the case.*

(b) *At the request of the defendant, the court reporter shall transcribe any portion of the notes of the court proceedings. The defendant shall pay for the transcription, but if the court finds that the defendant is too poor to pay or give security for the transcription after a hearing in response to an affidavit by the defendant, the court shall order the court reporter to make the transcription without charge to the defendant. The transcription cost may not exceed the charge made by court reporters in the county for similar transcriptions. If the case is reversed on appeal, the court shall promptly refund the cost to the defendant.*

**Sec. 30.431. COMPLETION, APPROVAL, AND TRANSFER OF RECORD.** (a) *Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file with the clerk of the municipal court of record:*

(1) *the statement of facts;*

(2) *a written description of material to be included in the transcript in addition to the required material; and*

(3) *any material to be included in the transcript that is not in the custody of the clerk.*

(b) *On completion of the record, the municipal judge shall approve the record in the manner provided for record completion notification and approval in the court of appeals.*

(c) *After the court approves the record, the clerk shall promptly send it to the appellate court clerk for filing. The appellate court clerk shall notify the defendant and the prosecuting attorney that the record has been filed.*

**Sec. 30.432. BRIEF ON APPEAL.** (a) *A defendant's brief on appeal from a municipal court of record must present points of error in the manner required by law for a brief on appeal to the court of appeals, except that the points are confined to those set forth in the motion for new trial.*

(b) *The defendant must file the brief with the appellate court clerk not later than the 15th day after the date on which the transcript and statement of facts are filed with that clerk. The clerk shall notify the prosecuting attorney of the filing.*

(c) *The prosecuting attorney must file the appellee's brief with the appellate court clerk not later than the 15th day after the date on which the defendant's brief is filed.*

(d) *Each party, on filing the party's brief with the appellate court clerk, shall deliver a copy of the brief to the opposing party.*

**Sec. 30.433. PROCEDURE; DISPOSITION ON APPEAL.** (a) *The appellate court shall hear appeals from the municipal courts of record at the earliest possible time with due regard to the rights of the parties and the proper administration of justice. The court may not affirm or reverse a case based on mere technicalities or on technical errors in the preparation and filing of the record on appeal. The court may determine the rules for oral argument. The parties may submit the case on the record and briefs without oral argument.*

(b) *According to the law and the nature of the case, the appellate court may:*

- (1) affirm the judgment of the municipal court of record;
- (2) reverse and remand for a new trial;
- (3) reverse and dismiss the case; or
- (4) reform and correct the judgment.

(c) Unless it was made an issue in the trial court or it affirmatively appears to the contrary from the transcript or the statement of facts, the appellate court shall presume that:

- (1) venue was proven in the trial court;
- (2) the jury, if any, was properly impaneled and sworn;
- (3) the defendant was arraigned and pleaded to the complaint; and
- (4) the municipal judge certified the charge before it was read to the jury.

(d) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The court does not need to give a reason for overruling an assignment of error, but it may cite the cases on which it relied. If an assignment of error is sustained, the court shall set forth the reasons for the decision. The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.

*Sec. 30.434. CERTIFICATE OF APPELLATE PROCEEDINGS.* When the judgment of the appellate court becomes final, the clerk of that court shall certify the proceedings and the judgment and shall mail the certificates to the clerk of the municipal court of record. The municipal clerk shall file the certificate with the papers in the case and note the certificate on the case docket. If the municipal court of record judgment is affirmed, further action to enforce the judgment is not necessary except to:

- (1) forfeit the bond of the defendant;
- (2) issue a writ of *capias* for the defendant; or
- (3) issue an execution against the defendant's property.

*Sec. 30.435. EFFECT OF ORDER OF NEW TRIAL.* If the appellate court awards a new trial to the defendant, the case stands as if a new trial had been granted by the municipal court of record.

*Sec. 30.436. APPEAL TO COURT OF APPEALS.* The defendant has the right to appeal to the court of appeals if the fine assessed against the defendant exceeds \$100 and if the judgment is affirmed by the appellate court. The provisions of the Code of Criminal Procedure relating to direct appeals from a county or a district court to the court of appeals apply to the appeal, except that:

- (1) the record and briefs on appeal in the appellate court and the transcript of proceedings in the appellate court constitute the record and briefs on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise; and
- (2) the record and briefs shall be filed directly with the court of appeals.

**SECTION 2.** 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 22, 1987, by the following vote: Yeas 148, Nays 0, 1 present, not voting. Passed by the Senate on May 30, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective June 19, 1987.