By: Deshotel H.B. No. 2278

A BILL TO BE ENTITLED

AN ACT

relating to a nonsubstantive revision of statutes relating to business and commerce; including conforming amendments.

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

ARTICLE 1. GENERAL MATTERS

SECTION 1.01. PURPOSE OF ACT. (a) This Act is enacted as a part of the state's continuing statutory revision program under Section 323.007, Government Code. 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 Act is to make the law encompassed by this Act 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(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and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.

ARTICLE 2. MISCELLANEOUS COMMERCIAL PROVISIONS

SECTION 2.01. TITLES 4 THROUGH 15 AND 99. The Business & Commerce Code is amended by revising Title 4 and adding Titles 5 through 15 and 99 to read as follows:

TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS

CHAPTER 51. BUSINESS OPPORTUNITIES

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Sec. 51.003. DEFINITION OF BUSINESS OPPORTUNITY

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Sec. 51.202. DELIVERY OF COPIES OF DOCUMENTS TO PURCHASER

Sec. 51.203. EFFECT OF ASSIGNMENT OF BUSINESS OPPORTUNITY CONTRACT

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Sec. 51.252. INVOLUNTARY TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION

[Sections 51.253-51.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

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CHAPTER 51. BUSINESS OPPORTUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. SHORT TITLE. This chapter may be cited as the Business Opportunity Act. (Bus. & Com. Code, Sec. 41.001.)

Sec. 51.002. GENERAL DEFINITIONS. In this chapter:

(1) "Business opportunity contract" means an agreement that obligates or is intended to obligate a purchaser to a seller.

(2) "Buy-back" or "secured investment" means a representation that implies a purchaser's payment is protected from

loss.

(3) "Equipment" includes electrical devices, video and audio devices, molds, display units, including display racks, and machines, including coin-operated game machines and vending and other machines that dispense products.

(4) "Initial consideration" means the total amount a purchaser is obligated to pay under a business opportunity contract before or at the time products, equipment, supplies, or services are delivered or within six months after the date the purchaser begins operation of the business opportunity plan. The term means the total sale price if the contract states a specific total sale price for purchase of the business opportunity plan and the total sale price is to be paid as a down payment and one or more additional payments. The term does not include the not-for-profit sale of sales demonstration materials, samples, or equipment for not more than $500.

(5) "Marketing program" means advice or training that a seller or a person recommended by a seller gives to a purchaser regarding the sale of products, equipment, supplies, or services. The term includes the preparation or provision of:

(A) a brochure, pamphlet, or advertising material, including promotional literature;

(B) training regarding the promotion, operation, or management of a business opportunity; or

(C) operational, managerial, technical, or financial guidelines or assistance.

(6) "Product" includes tangible personal property.

(7) "Purchaser" means a person who becomes or is solicited to become obligated under a business opportunity contract.

(8) "Seller" means a principal or agent who sells or leases or offers to sell or lease a business opportunity.

(9) "Services" includes any assistance, guidance, direction, work, labor, or other services provided by a seller to initiate or maintain a business opportunity.

(10) "Supplies" includes materials used to make, produce, grow, or breed a product or item. (Bus. & Com. Code, Secs. 41.003(1), (2), (4), (5), (6), (7), (8), (9), (10), (11), (12).)

Sec. 51.003. DEFINITION OF BUSINESS OPPORTUNITY. (a) In this chapter, "business opportunity" means a sale or lease for an initial consideration of more than $500 of products, equipment, supplies, or services that will be used by or for the purchaser to begin a business in which the seller represents that:

(1) the purchaser will earn or is likely to earn a profit in excess of the amount of the initial consideration the purchaser paid; and

(2) the seller will:

(A) provide a location or assist the purchaser in finding a location for the use or operation of the products, equipment, supplies, or services on premises that are not owned or leased by the purchaser or seller;

(B) provide a sales, production, or marketing program; or

(C) buy back or is likely to buy back products,

equipment, or supplies purchased or products made, produced, grown, or bred by the purchaser using wholly or partly the products, equipment, supplies, or services that the seller initially sold or leased or offered for sale or lease to the purchaser.

(b) In this chapter, "business opportunity" does not include:

(1) the sale or lease of an established and ongoing business or enterprise that has actively conducted business before the sale or lease, whether composed of one or more than one component business or enterprise, if the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of the business or enterprise or liquidation of the business or enterprise;

(2) a sale by a retailer of goods or services under a contract or other agreement to sell the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining a retail business establishment as a department or division of the retail business establishment;

(3) a transaction that is:

(A) regulated by the Texas Department of Licensing and Regulation, the Texas Department of Insurance, the Texas Real Estate Commission, or the director of the Motor Vehicle Division of the Texas Department of Transportation; and

(B) engaged in by a person licensed by one of those agencies;

(4) a real estate syndication;

(5) a sale or lease to a business enterprise that also sells or leases products, equipment, or supplies or performs services:

(A) that are not supplied by the seller; and

(B) that the purchaser does not use with the seller's products, equipment, supplies, or services;

(6) the offer or sale of a franchise as described by the Petroleum Marketing Practices Act (15 U.S.C. Section 2801 et seq.) and its subsequent amendments;

(7) the offer or sale of a business opportunity if the seller:

(A) has a net worth of $25 million or more according to the seller's audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(B) is at least 80 percent owned by another person who:

(i) in writing unconditionally guarantees performance by the person offering the business opportunity plan; and

(ii) has a net worth of more than $25 million according to the person's most recent audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(8) an arrangement defined as a franchise by 16 C.F.R. Section 436.2(a) and its subsequent amendments if:

(A) the franchisor complies in all material respects in this state with 16 C.F.R. Part 436 and each order or

other action of the Federal Trade Commission; and

(B) before offering for sale or selling a franchise in this state, a person files with the secretary of state a notice containing:

(i) the name of the franchisor;

(ii) the name under which the franchisor intends to transact business; and

(iii) the franchisor's principal business address.

(c) The secretary of state shall prescribe the form of the notice described by Subsection (b)(8)(B). (Bus. & Com. Code, Sec. 41.004.)

Sec. 51.004. LIBERAL CONSTRUCTION AND APPLICATION. (a) This chapter shall be liberally construed and applied to:

(1) protect persons against false, misleading, or deceptive practices in the advertising, offering for sale or lease, or sale or lease of business opportunities; and

(2) provide efficient and economical procedures to secure that protection.

(b) In construing this chapter, a court to the extent possible shall follow the interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1), Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)), and 16 C.F.R. Part 436 and their subsequent amendments. (Bus. & Com. Code, Sec. 41.002.)

Sec. 51.005. BURDEN OF PROOF. A person who claims to be exempt from this chapter has the burden of proving the exemption.

(Bus. & Com. Code, Sec. 41.005.)

Sec. 51.006. WAIVER. A waiver of this chapter is contrary to public policy and void. (Bus. & Com. Code, Sec. 41.009.)

Sec. 51.007. MAINTENANCE OF RECORDS. (a) A seller shall maintain a complete set of books, records, and accounts of business opportunity sales made by the seller.

(b) A document relating to a business opportunity sold or leased shall be maintained until the fourth anniversary of the date of the business opportunity contract. (Bus. & Com. Code, Sec. 41.008.)

Sec. 51.008. FILING FEE. The secretary of state may charge a reasonable fee to cover the costs incurred as a result of a filing required by Subchapter B or Section 51.003 or 51.251. (Bus. & Com. Code, Sec. 41.007.)

Sec. 51.009. RULES. The secretary of state may adopt rules to administer and enforce this chapter. (Bus. & Com. Code, Sec. 41.006.)

[Sections 51.010-51.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF BUSINESS OPPORTUNITY

Sec. 51.051. FILING OF DISCLOSURE STATEMENTS AND LIST OF SELLERS. Before a sale or offer for sale, including advertising, of a business opportunity, the principal seller must register the business opportunity with the secretary of state by filing:

(1) a copy of the disclosure statement required by Subchapter D, except as provided by Section 51.053; and

(2) a list of the name and resident address of any individual who sells or will sell the business opportunity for the

principal seller. (Bus. & Com. Code, Sec. 41.051.)

Sec. 51.052. UPDATING OF INFORMATION ON FILE. (a) A copy of a disclosure statement filed under Section 51.051 must be updated through a new filing:

(1) annually; and

(2) when a material change occurs.

(b) The list filed under Section 51.051(2) must be updated through a new filing every six months. (Bus. & Com. Code, Sec. 41.052.)

Sec. 51.053. FILING OF DISCLOSURE DOCUMENT FROM OTHER REGULATORY AGENCY. Instead of filing with the secretary of state a copy of a disclosure statement, a seller may file a copy of a similar document required by the State Securities Board, Securities and Exchange Commission, or Federal Trade Commission that contains all the information required to be disclosed by this chapter. (Bus. & Com. Code, Sec. 41.054 (part).)

Sec. 51.054. FILING OF COPY OF BOND OR NOTIFICATION OF ACCOUNT. A principal seller who is required to obtain a bond or establish a trust account under Subchapter C shall contemporaneously file with the secretary of state a copy of:

(1) the bond; or

(2) the formal notification by the depository that the trust account is established. (Bus. & Com. Code, Sec. 41.053.)

[Sections 51.055-51.100 reserved for expansion]

SUBCHAPTER C. BOND, TRUST ACCOUNT, OR LETTER OF CREDIT

Sec. 51.101. BOND, TRUST ACCOUNT, OR LETTER OF CREDIT REQUIRED. (a) Before a seller makes a representation described by

Section 51.003(a)(1) or otherwise represents that the purchaser is assured of making a profit from a business opportunity, the principal seller must:

(1) obtain a surety bond from a surety company authorized to transact business in this state;

(2) establish a trust account; or

(3) obtain an irrevocable letter of credit.

(b) The bond, trust account, or irrevocable letter of credit must be:

(1) in an amount of $25,000 or more; and

(2) in favor of this state. (Bus. & Com. Code, Sec. 41.101.)

Sec. 51.102. ACTION AGAINST BOND, TRUST ACCOUNT, OR LETTER OF CREDIT. (a) A person may bring an action against the bond, trust account, or irrevocable letter of credit obtained or established under Section 51.101 to recover actual damages for:

(1) a violation of this chapter; or

(2) the seller's breach of:

(A) the business opportunity contract; or

(B) an obligation arising from a business opportunity sale.

(b) The aggregate liability of the surety, trustee, or issuer in an action under Subsection (a) may not exceed the amount of the bond, trust account, or irrevocable letter of credit. (Bus. & Com. Code, Sec. 41.102.)

[Sections 51.103-51.150 reserved for expansion]

SUBCHAPTER D. DISCLOSURE STATEMENT

Sec. 51.151. DISCLOSURE TO PURCHASER OF BUSINESS OPPORTUNITY. (a) Except as provided by Section 51.164, a seller must provide a purchaser with a written disclosure statement that meets the requirements of this subchapter.

(b) The seller must provide the disclosure statement at least 10 business days before the earlier of the date:

(1) the purchaser signs a business opportunity contract; or

(2) the seller receives any consideration. (Bus. & Com. Code, Sec. 41.151.)

Sec. 51.152. COVER SHEET OF DISCLOSURE STATEMENT. (a) A disclosure statement must have a cover sheet titled, in at least 12-point boldface capital letters, "DISCLOSURES REQUIRED BY TEXAS LAW." The following statement must appear below the title in at least 10-point boldface type: "The State of Texas has not reviewed and does not endorse, approve, recommend, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement."

(b) Only the title and required statement may appear on the cover sheet. (Bus. & Com. Code, Sec. 41.152.)

Sec. 51.153. CONTENTS: NAMES AND ADDRESSES. A disclosure statement must contain:

(1) the name of the seller;

(2) each name under which the seller has transacted,

is transacting, or intends to transact business;

(3) the name of any parent or affiliated company that will engage in a business transaction with the purchaser or that takes responsibility for statements made by the seller; and

(4) the names, addresses, and titles of:

(A) the seller's officers, directors, trustees, general partners, general managers, and principal executives;

(B) shareholders owning more than 20 percent of the shares of the seller; and

(C) any other persons responsible for the seller's business activities relating to the sale of business opportunities. (Bus. & Com. Code, Sec. 41.153.)

Sec. 51.154. CONTENTS: SALES PERIODS. A disclosure statement must:

(1) specify the period during which the seller has sold business opportunities; and

(2) specify the period during which the seller has sold business opportunities involving the products, equipment, supplies, or services the seller is offering to the purchaser. (Bus. & Com. Code, Sec. 41.154.)

Sec. 51.155. CONTENTS: SERVICES DESCRIPTION. A disclosure statement must contain:

(1) a detailed description of the actual services the seller undertakes to perform for the purchaser; and

(2) if the seller promises to perform services in connection with the placement of products, equipment, or supplies at a location:

(A) the full nature of those services; and

(B) the nature of any agreements to be made with the owners or managers of that location. (Bus. & Com. Code, Sec. 41.155.)

Sec. 51.156. CONTENTS: UPDATED FINANCIAL STATEMENT. A disclosure statement must contain a copy of a financial statement of the seller that:

(1) was prepared according to generally accepted accounting principles within the previous 13 months; and

(2) has been updated to reflect any material change in the seller's financial condition. (Bus. & Com. Code, Sec. 41.156.)

Sec. 51.157. CONTENTS: TRAINING DESCRIPTION. If the seller promises training, the disclosure statement must contain a complete description of the training, including:

(1) the length of the training; and

(2) any costs of the training that the purchaser will be required to incur, including travel and lodging expenses. (Bus. & Com. Code, Sec. 41.157.)

Sec. 51.158. CONTENTS: SECURITY DESCRIPTION. If the seller is required to obtain a bond or establish a trust account, the disclosure statement must contain one of the following statements, as applicable:

(1) "As required by Texas law, the seller has secured a bond issued by _____, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(2) "As required by Texas law, the seller has established a trust account with _____. Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account." (Bus. & Com. Code, Sec. 41.158.)

Sec. 51.159. CONTENTS: DELIVERY DATE; CANCELLATION OF CONTRACT. If the seller is required to deliver to the purchaser the product, equipment, or supplies necessary to begin substantial operation of the business and states a definite or approximate delivery date for the product, equipment, or supplies, the disclosure statement must contain the following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract." (Bus. & Com. Code, Sec. 41.159.)

Sec. 51.160. CONTENTS: SALES OR EARNINGS REPRESENTATION. If the seller makes a statement concerning sales or earnings that may be made through the business opportunity, the disclosure statement must contain a statement disclosing:

(1) the total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who to the seller's knowledge have, not earlier than the third year before the date of the disclosure statement, actually achieved sales of or received earnings in the amount or range specified; and

(2) the total number of purchasers who, not earlier

than the third year before the date of the disclosure statement, purchased business opportunities involving the product, equipment, supplies, or services being offered. (Bus. & Com. Code, Sec. 41.160.)

Sec. 51.161. CONTENTS: LEGAL ACTION HISTORY. (a) A disclosure statement must contain a statement disclosing any person described by Section 51.153 who:

(1) has, during the previous seven fiscal years:

(A) been convicted of a felony, or pleaded nolo contendere to a felony charge, involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(B) been held liable in a civil action resulting in a final judgment, or has settled out of court a civil action, involving:

(i) allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) the use of untrue or misleading representations in an attempt to sell or dispose of property; or

(iii) the use of unfair, unlawful, or deceptive business practices;

(2) is a party to a civil action involving:

(A) allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) the use of untrue or misleading representations in an attempt to sell or dispose of property; or

(C) the use of unfair, unlawful, or deceptive business practices; or

(3) is subject to an injunction or restrictive order relating to business activity as a result of an action brought by a public agency or department.

(b) A statement required by Subsection (a) must include:

(1) the identity and location of any court or agency;

(2) the date of any entry of a plea of nolo contendere, conviction, judgment, or decision;

(3) any penalty imposed;

(4) any damages assessed;

(5) the terms of any settlement or order; and

(6) the date, nature, and issuer of any order or ruling. (Bus. & Com. Code, Sec. 41.161.)

Sec. 51.162. CONTENTS: BANKRUPTCY OR REORGANIZATION. (a) A disclosure statement must contain a statement disclosing any person described by Section 51.153 who has, during the previous seven fiscal years:

(1) filed in bankruptcy;

(2) been adjudged bankrupt;

(3) been reorganized because of insolvency; or

(4) been a principal, director, executive officer, or partner of any other person that, during or not later than the first anniversary of the end of the period the person held the position in relation to the other person, filed in bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency.

(b) A statement required by Subsection (a)(4) must include:

(1) the name and location of the person who filed in bankruptcy, was adjudged bankrupt, or was reorganized;

(2) the date of the filing, adjudication, or reorganization; and

(3) any other material fact relating to the filing, adjudication, or reorganization. (Bus. & Com. Code, Sec. 41.162.)

Sec. 51.163. CONTENTS: CONTRACT COPY. A disclosure statement must contain a copy of the business opportunity contract that the seller uses as a matter of course and that will be presented to the purchaser at closing. (Bus. & Com. Code, Sec. 41.163.)

Sec. 51.164. USE OF DISCLOSURE DOCUMENT FROM OTHER REGULATORY AGENCY. Instead of providing a disclosure statement to a purchaser under this subchapter, a seller may provide a copy of a similar document required by the State Securities Board, Securities and Exchange Commission, or Federal Trade Commission that contains all the information required to be disclosed by this chapter. (Bus. & Com. Code, Sec. 41.054 (part).)

[Sections 51.165-51.200 reserved for expansion]

SUBCHAPTER E. BUSINESS OPPORTUNITY CONTRACT

Sec. 51.201. FORM OF BUSINESS OPPORTUNITY CONTRACT. A business opportunity contract must be in writing and include, in 10-point type or in handwriting of an equivalent size, the following:

(1) the terms of payment, including the initial consideration, down payment, and additional payments required;

(2) a detailed description of the acts or services the seller undertakes to perform for the purchaser;

(3) the seller's principal business address;

(4) the name and address of the seller's agent in this state authorized to receive service of process;

(5) the delivery date or, if the contract provides for staggered delivery times to the purchaser, the approximate delivery date of the products, equipment, or supplies the seller is to:

(A) deliver to the purchaser's home or business address; or

(B) place at a location owned or managed by a person other than the purchaser; and

(6) a complete description of the nature of the buy-back or security arrangement if the seller has represented orally or in writing when selling, leasing, soliciting, or offering a business opportunity that there is a buy-back or that the initial consideration is secured. (Bus. & Com. Code, Sec. 41.201.)

Sec. 51.202. DELIVERY OF COPIES OF DOCUMENTS TO PURCHASER. A copy of the completed business opportunity contract and any other document the seller requires the purchaser to sign shall be given to the purchaser at the time the purchaser signs the contract. (Bus. & Com. Code, Sec. 41.202.)

Sec. 51.203. EFFECT OF ASSIGNMENT OF BUSINESS OPPORTUNITY CONTRACT. An assignee of a business opportunity contract or of the seller's rights under the contract is subject to all equities, rights, and defenses of the purchaser against the seller. (Bus. & Com. Code, Sec. 41.203.)

[Sections 51.204-51.250 reserved for expansion]

SUBCHAPTER F. TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION

Sec. 51.251. VOLUNTARY TERMINATION OF BUSINESS OPPORTUNITY

REGISTRATION. The principal seller of a registered business opportunity may voluntarily terminate the business opportunity's registration with the secretary of state if:

(1) the registered business opportunity will no longer be offered in this state;

(2) the registered business opportunity has changed to the extent that it no longer meets the definition of a business opportunity under Section 51.003(a);

(3) the registered business opportunity has become exempt under Section 51.003(b); or

(4) the principal seller offering the registered business opportunity ceases to exist as a legal entity. (Bus. & Com. Code, Sec. 41.251.)

Sec. 51.252. INVOLUNTARY TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION. (a) The secretary of state may terminate the registration of a business opportunity registered under Section 51.051 if the seller does not comply with Section 51.052.

(b) The secretary of state must give the business opportunity registrant notice of the delinquency not later than the 31st day before the date of termination of the business opportunity registration under Subsection (a).

(c) The notice of delinquency must be given by certified mail addressed to the registered agent or the principal place of business of the business opportunity registrant noted in the latest filing made under this chapter.

(d) The secretary of state may adopt rules governing:

(1) the termination of a delinquent registration;

(2) the effective date of the termination; and

(3) the grace period, if any. (Bus. & Com. Code, Sec. 41.252.)

[Sections 51.253-51.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

Sec. 51.301. PROHIBITED ACTS. A seller may not:

(1) employ a representation, device, scheme, or artifice to deceive a purchaser;

(2) make an untrue statement of a material fact or omit to state a material fact in connection with the documents and information required to be provided to the secretary of state or purchaser;

(3) represent that the business opportunity provides or will provide income or earning potential unless the seller:

(A) has documented data to substantiate the representation of income or earning potential; and

(B) discloses the data to the purchaser when the representation is made; or

(4) make a claim or representation that is inconsistent with the information required to be disclosed by this chapter in:

(A) advertising or other promotional material; or

(B) an oral sales presentation, solicitation, or discussion between the seller and the purchaser. (Bus. & Com. Code, Sec. 41.301.)

Sec. 51.302. DECEPTIVE TRADE PRACTICE; REMEDIES. (a) A violation of this chapter is a false, misleading, or deceptive act or practice under Section 17.46.

(b) A public or private right or remedy prescribed by Chapter 17 may be used to enforce this chapter. (Bus. & Com. Code, Sec. 41.302.)

Sec. 51.303. REVIEW AND SUIT BY ATTORNEY GENERAL. (a) The attorney general may review the copy of a disclosure statement filed with the secretary of state under Subchapter B.

(b) If the disclosure statement fails to comply with this chapter, the attorney general may:

(1) notify the secretary of state and the seller in writing of the deficiency; and

(2) file suit to enjoin the seller from transacting business until the failure to comply has been corrected.

(c) If the attorney general notifies the secretary of state under Subsection (b), the secretary of state shall:

(1) attach a copy of the notice to the front of the disclosure statement; and

(2) on inquiry of the status of the disclosure statement, disclose that a statement has been filed but that the attorney general has questioned the correctness of the statement. (Bus. & Com. Code, Sec. 41.303.)

CHAPTER 52. INVENTION DEVELOPMENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. SHORT TITLE

Sec. 52.002. DEFINITIONS

Sec. 52.003. APPLICABILITY OF CHAPTER TO CONTRACT FOR INVENTION DEVELOPMENT SERVICES

Sec. 52.004. WAIVER BY CUSTOMER PROHIBITED

[Sections 52.005-52.050 reserved for expansion]

SUBCHAPTER B. FINANCIAL REQUIREMENTS OF INVENTION DEVELOPERS

Sec. 52.051. BOND REQUIRED

Sec. 52.052. BENEFICIARY OF BOND; CLAIM AGAINST BOND

Sec. 52.053. CASH DEPOSIT INSTEAD OF BOND

[Sections 52.054-52.100 reserved for expansion]

SUBCHAPTER C. INVENTION DEVELOPMENT SERVICES CONTRACT

Sec. 52.101. WRITTEN CONTRACT REQUIRED; CUSTOMER COPY

Sec. 52.102. MANDATORY CONTRACT TERMS

Sec. 52.103. MULTIPLE CONTRACTS

Sec. 52.104. PAYMENT FOR SERVICES; OPTION TO TERMINATE CONTRACT

Sec. 52.105. COVER NOTICE REQUIRED

Sec. 52.106. QUARTERLY REPORTS TO CUSTOMER REQUIRED

[Sections 52.107-52.150 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT

Sec. 52.151. CONTRACT VOIDABLE

Sec. 52.152. PRIVATE CAUSE OF ACTION

Sec. 52.153. DECEPTIVE TRADE PRACTICE

Sec. 52.154. MUTUALLY EXCLUSIVE REMEDIES

Sec. 52.155. PRESUMPTION OF INJURY

Sec. 52.156. ENFORCEMENT BY ATTORNEY GENERAL

Sec. 52.157. APPLICATION OF OTHER LAWS

CHAPTER 52. INVENTION DEVELOPMENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. SHORT TITLE. This chapter may be cited as the Regulation of Invention Development Services Act. (V.A.C.S. Art. 9020, Sec. 1.)

Sec. 52.002. DEFINITIONS. In this chapter:

(1) "Customer" means:

(A) an individual who enters into a contract with an invention developer for invention development services; or

(B) a firm, partnership, corporation, or other entity that enters into a contract with an invention developer for invention development services and is not purchasing those services as an adjunct to the traditional commercial enterprises in which the entity engages as a business.

(2) "Invention" means a discovery, process, machine, design, formulation, product, concept, idea, or any combination of these, regardless of whether patentable.

(3) "Invention developer" means an individual, firm, partnership, or corporation, or an agent, employee, officer, partner, or independent contractor of one of those entities, who:

(A) performs or offers to perform invention development services for a customer; and

(B) is not:

(i) a federal, state, or local government department or agency;

(ii) a nonprofit, charitable, scientific, or educational organization organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil

Statutes) or formed under Title 1 and Chapter 22, Business Organizations Code, or described by Section 170(b)(1)(A), Internal Revenue Code of 1986, as amended;

(iii) an attorney acting within the scope of the attorney's professional license;

(iv) a person registered to practice before the United States Patent and Trademark Office and acting within the scope of that person's professional license; or

(v) a person, firm, corporation, association, or other entity that does not charge a fee, including reimbursement for expenditures made or costs incurred by the entity, for invention development services other than payment made from a portion of the income a customer received by virtue of an act performed by the entity.

(4) "Invention development services" means an act done by or for an invention developer for the invention developer's procurement or attempted procurement of a licensee or buyer of an intellectual property right in an invention, including:

(A) evaluating, perfecting, marketing, or brokering an invention;

(B) performing a patent search; and

(C) preparing or prosecuting a patent application by a person not registered to practice before the United States Patent and Trademark Office. (V.A.C.S. Art. 9020, Secs. 2, 3, 4.)

Sec. 52.003. APPLICABILITY OF CHAPTER TO CONTRACT FOR INVENTION DEVELOPMENT SERVICES. This chapter applies to each

contract under which an invention developer agrees to perform invention development services for a customer. (V.A.C.S. Art. 9020, Sec. 5(a) (part).)

Sec. 52.004. WAIVER BY CUSTOMER PROHIBITED. A waiver by a customer of a provision of this chapter is void. (V.A.C.S. Art. 9020, Sec. 9(a) (part).)

[Sections 52.005-52.050 reserved for expansion]

SUBCHAPTER B. FINANCIAL REQUIREMENTS OF INVENTION DEVELOPERS

Sec. 52.051. BOND REQUIRED. (a) Except as provided by Section 52.053, an invention developer performing or offering to perform invention development services in this state shall maintain a bond issued by a surety company authorized to transact business in this state.

(b) The principal amount of the bond must equal at least the greater of:

(1) five percent of the invention developer's gross income from the invention development business in this state during the invention developer's last fiscal year; or

(2) $25,000.

(c) The invention developer must file a copy of the bond with the secretary of state before the date the invention developer begins business in this state.

(d) Before the 91st day after the last day of the invention developer's fiscal year, the invention developer shall change the amount of the bond if necessary to conform with this section and Section 52.052. (V.A.C.S. Art. 9020, Sec. 11(a).)

Sec. 52.052. BENEFICIARY OF BOND; CLAIM AGAINST BOND. (a)

The bond required by Section 52.051 must be:

(1) in favor of this state; and

(2) for the benefit of any person who, after entering into a contract for invention development services with the invention developer, is damaged by fraud, dishonesty, or failure to provide the invention developer's services in performance of the contract.

(b) A person making a claim against the bond may bring an action against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond required by this section is limited to the amount of the bond. (V.A.C.S. Art. 9020, Sec. 11(b).)

Sec. 52.053. CASH DEPOSIT INSTEAD OF BOND. Instead of furnishing the bond required by Section 52.051, the invention developer may provide for, in an amount equal to the amount of the bond required:

(1) cash deposited with the secretary of state;

(2) a certificate of deposit payable to the secretary of state and issued by a bank that is:

(A) transacting business in this state; and

(B) insured by the Federal Deposit Insurance Corporation;

(3) an investment certificate of a share account assigned to the secretary of state and issued by a savings and loan association that is:

(A) transacting business in this state; and

(B) insured by the Federal Deposit Insurance

Corporation; or

(4) a bearer bond issued by the United States government or this state. (V.A.C.S. Art. 9020, Sec. 11(c).)

[Sections 52.054-52.100 reserved for expansion]

SUBCHAPTER C. INVENTION DEVELOPMENT SERVICES CONTRACT

Sec. 52.101. WRITTEN CONTRACT REQUIRED; CUSTOMER COPY. (a) A contract for invention development services must be in writing.

(b) The invention developer shall give a copy of the contract to the customer at the time the customer signs the contract. (V.A.C.S. Art. 9020, Sec. 5(a) (part).)

Sec. 52.102. MANDATORY CONTRACT TERMS. (a) A contract for invention development services must contain in boldfaced type of not less than 10-point size:

(1) the payment terms;

(2) the contract termination rights required by Section 52.104;

(3) a full, clear, and concise description of the specific acts or services that the invention developer agrees to perform for the customer;

(4) a statement of whether the invention developer agrees to construct, sell, or distribute one or more prototypes, models, or devices embodying the customer's invention;

(5) the full name and principal place of business of the invention developer;

(6) the name and principal place of business of any parent, subsidiary, or affiliated company that may engage in performing any of the invention development services;

(7) if the invention developer makes an oral or written representation of estimated or projected customer earnings, a statement of estimated or projected customer earnings and a description of the data on which the estimation or projection is based;

(8) the name and address of the custodian of all records and correspondence pertaining to the invention development services described by the contract;

(9) a statement that the invention developer:

(A) is required to maintain all records and correspondence relating to performance of the invention development services for the customer until the second anniversary of the date the contract expires; and

(B) on seven days' written notice will make the invention development services records and correspondence available to the customer or the customer's representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours; and

(10) a time schedule for performance of the invention development services, including an estimated date by which performance is expected to be completed.

(b) An invention developer is a fiduciary to the extent that the description of specific acts or services required by Subsection (a)(3) gives the invention developer discretion in determining which acts or services will be performed. (V.A.C.S. Art. 9020, Sec. 8.)

Sec. 52.103. MULTIPLE CONTRACTS. If it is the invention

developer's normal practice to seek more than one contract in connection with an invention or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall give to the customer at the time the customer signs the first contract:

(1) a written statement describing that practice; and

(2) a written summary of the developer's normal terms, if any, for subsequent contracts, including the approximate amount of the developer's normal fees or other consideration that the developer may require from the customer. (V.A.C.S. Art. 9020, Sec. 5(b).)

Sec. 52.104. PAYMENT FOR SERVICES; OPTION TO TERMINATE CONTRACT. (a) For purposes of this section, delivery of a promissory note, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer is payment, regardless of the date or dates appearing on the instrument.

(b) Notwithstanding any contractual provision to the contrary, payment for invention development services may not be required, made, or received before the fourth working day after the date the customer receives a copy of the contract for invention development services signed by the invention developer and the customer.

(c) Until the payment for invention development services is made, the parties to the contract have the option to terminate the contract. The customer may exercise the option to terminate by

refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer a written notice of the invention developer's exercise of the option. The written notice becomes effective when the customer receives the notice. (V.A.C.S. Art. 9020, Secs. 5(c), (d), (e).)

Sec. 52.105. COVER NOTICE REQUIRED. (a) A contract for invention development services must have attached a conspicuous and legible cover sheet that contains:

(1) the name, home address, office address, and local office address of the invention developer; and

(2) the following notice in boldfaced type of not less than 10-point size:

THIS CONTRACT BETWEEN YOU AND AN INVENTION DEVELOPER IS REGULATED BY THE STATE OF TEXAS' REGULATION OF INVENTION DEVELOPMENT SERVICES ACT. YOU ARE NOT PERMITTED OR REQUIRED TO MAKE ANY PAYMENTS UNDER THIS CONTRACT UNTIL FOUR (4) WORKING DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.

IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER SINCE (year) IS (number). THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION

DEVELOPER IS (number).

YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.

(b) The invention developer shall complete the cover sheet by providing the proper information in the blanks of the cover sheet. In the first blank the invention developer shall enter the later of the year that the invention developer began to transact business or May 7, 1981. The invention developer may round the numbers the invention developer enters in the last two blanks to the nearest 100 and, in computing the numbers, may exclude persons who have contracted with the invention developer during the three calendar months preceding the date of the contract. If the number to be inserted in the third blank is zero, the invention developer shall enter a zero in the blank.

(c) The cover sheet may not contain anything other than the information required by Subsection (a). (V.A.C.S. Art. 9020, Sec. 6.)

Sec. 52.106. QUARTERLY REPORTS TO CUSTOMER REQUIRED. At least once each calendar quarter during the term of a contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract a written report that identifies the contract and contains:

(1) a full, clear, and concise description of the services performed up to the date of the report and of the services to be performed; and

(2) the name and address of each person to whom the subject matter of the contract has been disclosed, the reason for each disclosure, the nature of the disclosure, and copies of all responses received as a result of those disclosures. (V.A.C.S. Art. 9020, Sec. 7.)

[Sections 52.107-52.150 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT

Sec. 52.151. CONTRACT VOIDABLE. A contract for invention development services is voidable at the option of the customer if the contract:

(1) does not substantially comply with this chapter; or

(2) was entered into in reliance on any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer. (V.A.C.S. Art. 9020, Sec. 9(a) (part).)

Sec. 52.152. PRIVATE CAUSE OF ACTION. (a) This section applies only to a customer who is injured by an invention developer's:

(1) violation of this chapter;

(2) false or fraudulent statement, representation, or omission of material fact; or

(3) failure to make all disclosures required by this chapter.

(b) A customer to whom this section applies may recover in a civil action against the invention developer:

(1) the greater of:

(A) the amount of any actual damages sustained by the customer; or

(B) $1,000;

(2) court costs; and

(3) attorney's fees. (V.A.C.S. Art. 9020, Sec. 9(b).)

Sec. 52.153. DECEPTIVE TRADE PRACTICE. The following acts, omissions, or failures by an invention developer constitute a deceptive trade practice under Chapter 17:

(1) a violation of this chapter;

(2) an omission of material fact; or

(3) a failure to make a disclosure required by this chapter. (V.A.C.S. Art. 9020, Sec. 9(c) (part).)

Sec. 52.154. MUTUALLY EXCLUSIVE REMEDIES. Remedies available under Sections 52.152 and 52.153 are mutually exclusive. (V.A.C.S. Art. 9020, Sec. 9(c) (part).)

Sec. 52.155. PRESUMPTION OF INJURY. For purposes of Sections 52.152 and 52.153, a rebuttable presumption of injury is established by:

(1) a substantial violation of this chapter by an invention developer; or

(2) a customer's execution of a contract for invention development services in reliance on a false or fraudulent statement, representation, or an omission of material fact. (V.A.C.S. Art. 9020, Sec. 9(d).)

Sec. 52.156. ENFORCEMENT BY ATTORNEY GENERAL. (a) The attorney general shall enforce this chapter.

(b) The attorney general may:

(1) recover a civil penalty not to exceed $2,000 for each violation of this chapter; and

(2) seek equitable relief to restrain a violation of this chapter. (V.A.C.S. Art. 9020, Sec. 10.)

Sec. 52.157. APPLICATION OF OTHER LAWS. This chapter does not nullify or limit any obligation, right, or remedy that is applicable or available under the law of this state. (V.A.C.S. Art. 9020, Sec. 12.)

CHAPTER 53. STORE LEASES

Sec. 53.001. STORE LEASE CONTRACT

CHAPTER 53. STORE LEASES

Sec. 53.001. STORE LEASE CONTRACT. (a) A provision of a lease contract that requires a store to be open when another store located in the same shopping center is open does not apply on Sunday unless the provision specifically states that it applies on Sunday.

(b) This section applies to a contract executed before or after September 1, 1985. (Bus. & Com. Code, Sec. 35.44.)

CHAPTER 54. COMPENSATION AGREEMENTS FOR SALES REPRESENTATIVES

Sec. 54.001. DEFINITIONS
Sec. 54.002. CONTRACT
Sec. 54.003. PAYMENT ON TERMINATION OF CERTAIN COMPENSATION AGREEMENTS
Sec. 54.004. DAMAGES
Sec. 54.005. PERSONAL JURISDICTION
Sec. 54.006. WAIVER

CHAPTER 54. COMPENSATION AGREEMENTS FOR SALES REPRESENTATIVES

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "Commission" means compensation paid a sales representative by a principal in an amount based on a percentage of the dollar amount of certain orders for or sales of the principal's product.

(2) "Principal" means a person who:

(A) manufactures, produces, imports, or distributes a product for sale;

(B) uses a sales representative to solicit orders for the product; and

(C) compensates the sales representative wholly or partly by commission.

(3) "Sales representative" means an independent contractor who solicits, on behalf of a principal, orders for the purchase at wholesale of the principal's product. (Bus. & Com. Code, Sec. 35.81.)

Sec. 54.002. CONTRACT. (a) A contract between a principal and a sales representative under which the sales representative is to solicit wholesale orders within this state must:

(1) be in writing or in a computer-based medium; and

(2) state the method by which the sales representative's commission is to be computed and paid.

(b) The principal shall provide the sales representative with a copy of the contract.

(c) A provision in the contract establishing venue for an action arising under the contract in a state other than this state is void. (Bus. & Com. Code, Sec. 35.82.)

Sec. 54.003. PAYMENT ON TERMINATION OF CERTAIN COMPENSATION

AGREEMENTS. If a compensation agreement between a sales representative and a principal that does not comply with Section 54.002 is terminated, the principal shall pay all commissions due the sales representative not later than the 30th working day after the date of the termination. (Bus. & Com. Code, Sec. 35.83.)

Sec. 54.004. DAMAGES. A principal who fails to comply with a provision of a contract under Section 54.002 relating to payment of a commission or who fails to pay a commission as required by Section 54.003 is liable to the sales representative in a civil action for:

(1) three times the unpaid commission due the sales representative; and

(2) reasonable attorney's fees and costs. (Bus. & Com. Code, Sec. 35.84.)

Sec. 54.005. PERSONAL JURISDICTION. A principal who is not a resident of this state and who enters into a contract subject to this chapter is considered to be transacting business in this state for purposes of the exercise of personal jurisdiction over the principal. (Bus. & Com. Code, Sec. 35.85.)

Sec. 54.006. WAIVER. A provision of this chapter may not be waived, whether by an express waiver or by an attempt to make a contract or agreement subject to the laws of another state. A waiver of a provision of this chapter is void. (Bus. & Com. Code, Sec. 35.86.)

CHAPTER 55. FARM, INDUSTRIAL, OFF-ROAD CONSTRUCTION, FORESTRY HARVESTING, AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.001. DEFINITIONS

Sec. 55.002. SECURITY INTEREST

Sec. 55.003. WAIVER OF CHAPTER

[Sections 55.004-55.050 reserved for expansion]

SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

Sec. 55.051. SUPPLEMENTARY AGREEMENT

Sec. 55.052. CHANGE IN COMPETITIVE CIRCUMSTANCES

Sec. 55.053. INTEREST IN DEALERSHIP BY SALE OR TRANSFER

Sec. 55.054. TRANSFER OF CONTROLLING INTEREST IN DEALERSHIP BY SUCCESSION

Sec. 55.055. CONTINUATION OF AGREEMENT

Sec. 55.056. CAUSE REQUIRED FOR TERMINATION

Sec. 55.057. RENOVATION OR ADDITIONAL SPACE

[Sections 55.058-55.100 reserved for expansion]

SUBCHAPTER C. WARRANTIES

Sec. 55.101. APPLICABILITY OF SUBCHAPTER

Sec. 55.102. ACCEPTANCE OR REJECTION OF WARRANTY CLAIM

Sec. 55.103. SUPPLIER'S RECOVERY OF WARRANTY CLAIM

Sec. 55.104. PURCHASER'S WARRANTY AGREEMENT

[Sections 55.105-55.150 reserved for expansion]

SUBCHAPTER D. DELIVERY, SALE, AND RETURN OF EQUIPMENT

Sec. 55.151. COERCED ORDERS, DELIVERIES, OR REFUSALS TO PURCHASE PROHIBITED

Sec. 55.152. DISCRIMINATION AMONG DEALERS

Sec. 55.153. LATE DELIVERY OF BACK-ORDERED SEASONAL DEMAND ITEM

Sec. 55.154. SALES TO AFFILIATED DEALER

Sec. 55.155. RETURN OF INVENTORY; RESPONSIBILITY FOR COSTS

Sec. 55.156. RETURN OF DATA PROCESSING OR PERIPHERAL EQUIPMENT, SOFTWARE, OR CERTAIN TOOLS; RESPONSIBILITY FOR COSTS

Sec. 55.157. SUPPLIER'S LIABILITY FOR LATE PAYMENT

Sec. 55.158. EXCEPTIONS TO SUPPLIER'S REPURCHASE, PURCHASE, OR ASSUMPTION RESPONSIBILITY

[Sections 55.159-55.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 55.201. ACTION FOR VIOLATION OF CHAPTER

CHAPTER 55. FARM, INDUSTRIAL, OFF-ROAD CONSTRUCTION, FORESTRY HARVESTING, AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "Controlling interest" means 50 percent or more ownership of or a managing interest in a dealership.

(2) "Current price" means an amount equal to the price listed in the supplier's printed price list in effect when a dealer agreement is terminated, less applicable trade and cash discounts.

(3) "Dealer" means a person in the business of the retail sale of equipment. The term does not include an individual, partnership, or corporation who:

(A) is primarily engaged in the retail sale and

service of off-road construction and earth-moving equipment;

(B) has purchased 75 percent or more of the dealer's total new product inventory from a single supplier under all agreements with that supplier; and

(C) has a total annual average sales volume in excess of $100 million for the preceding three years with that single supplier for the territory for which the dealer is responsible in this state.

(4) "Dealer agreement" means an oral or written contract, of definite or indefinite duration, between a supplier and a dealer, that states the rights and obligations of the parties with respect to the purchase or sale of equipment.

(5) "Dealer cost" means an amount equal to the sum of the original invoice price that the dealer paid for inventory and the cost to the dealer of the inventory's delivery from the supplier to the dealer, less applicable discounts.

(6) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement.

(7) "Equipment" means farm tractors, farm implements, utility tractors, industrial tractors, forklifts, material-handling equipment, forestry harvesting equipment, off-road construction equipment, and outdoor power equipment and any attachments to or repair parts for those items.

(8) "Inventory" means new or unused equipment that is provided by a supplier to a dealer under a dealer agreement and that was:

(A) purchased within the 30-month period

preceding the date of the termination of the dealership; or

(B) listed in the supplier's current sales manual on the date of termination.

(9) "Outdoor power equipment" means machinery operated by an engine or electric power and used in the landscaping or cultivation of land for nonagricultural purposes. The term includes lawn and garden implements.

(10) "Supplier" means:

(A) a person engaged in the manufacture, assembly, or wholesale distribution of equipment; or

(B) the person's successor in interest, including a purchaser of assets or stock and a surviving corporation resulting from a merger, liquidation, or reorganization. (Bus. & Com. Code, Secs. 19.01(2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12).)

Sec. 55.002. SECURITY INTEREST. This chapter does not affect a supplier's security interest in inventory. (Bus. & Com. Code, Sec. 19.03.)

Sec. 55.003. WAIVER OF CHAPTER. An attempted waiver of a provision of this chapter is void. (Bus. & Com. Code, Sec. 19.05.)

[Sections 55.004-55.050 reserved for expansion]

SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

Sec. 55.051. SUPPLEMENTARY AGREEMENT. A supplier may not coerce or compel a dealer to enter into a written or oral agreement supplementing a dealer agreement with the supplier unless the supplementary agreement is imposed on all other similarly situated dealers in this state. (Bus. & Com. Code, Sec. 19.21.)

Sec. 55.052. CHANGE IN COMPETITIVE CIRCUMSTANCES. A supplier may not substantially change the competitive circumstances of a dealer agreement without cause. (Bus. & Com. Code, Sec. 19.27.)

Sec. 55.053. INTEREST IN DEALERSHIP BY SALE OR TRANSFER. (a) A supplier may not prevent, by contract or otherwise, a dealer or an officer, member, partner, or shareholder of a dealer from selling or transferring a noncontrolling interest in the dealership to another person.

(b) A supplier may prevent a person from selling or transferring a controlling interest in a dealership without the supplier's written consent. A supplier may not unreasonably withhold the supplier's consent to a sale or transfer of a controlling interest. (Bus. & Com. Code, Secs. 19.26(a), (b).)

Sec. 55.054. TRANSFER OF CONTROLLING INTEREST IN DEALERSHIP BY SUCCESSION. (a) In this section, "family member" means an individual related within the second degree by consanguinity or affinity to an individual owning a controlling interest.

(b) A supplier and a dealer may provide by written agreement for succession rights to a controlling interest in a dealership on the death of an individual owning the controlling interest.

(c) If not otherwise determined by a written agreement between the dealer and supplier, on the death of an individual owning a controlling interest in a dealership, the family member to whom the interest passes by will or intestate succession may request that the supplier consent to a transfer of the ownership interest to the family member.

(d) The supplier shall consent to a transfer described by Subsection (c) if the family member meets the reasonable financial, business experience, and character standards of the supplier. Before the 91st day after the date the supplier receives the family member's request, the supplier shall send a written response to the family member that:

(1) grants the supplier's consent; or

(2) states the supplier's refusal to consent and the specific reasons for the refusal. (Bus. & Com. Code, Secs. 19.26(c), (d).)

Sec. 55.055. CONTINUATION OF AGREEMENT. Section 55.053 or 55.054 does not require a supplier to continue a dealer agreement if the supplier determines that the dealer's area of responsibility or trade area lacks sufficient sales potential to reasonably support continuation of the agreement. (Bus. & Com. Code, Sec. 19.26(e).)

Sec. 55.056. CAUSE REQUIRED FOR TERMINATION. A supplier may not terminate, cancel, or fail to renew a dealer agreement without cause. (Bus. & Com. Code, Sec. 19.41.)

Sec. 55.057. RENOVATION OR ADDITIONAL SPACE. A supplier may not require as a condition of renewal or extension of a dealer agreement that the dealer complete substantial renovation of the dealer's place of business or acquire new or additional space to serve as the dealer's place of business, unless the supplier gives the dealer:

(1) one year's written notice of the requirement that states all grounds for the requirement; and

(2) reasonable time to complete the renovation or

acquisition. (Bus. & Com. Code, Sec. 19.42.)

[Sections 55.058-55.100 reserved for expansion]

SUBCHAPTER C. WARRANTIES

Sec. 55.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a warranty claim submitted by a dealer:

(1) while the dealer agreement is in effect; or

(2) after the termination of the dealer agreement, if the claim is for work performed before the effective date of the termination. (Bus. & Com. Code, Sec. 19.28(a).)

Sec. 55.102. ACCEPTANCE OR REJECTION OF WARRANTY CLAIM. (a) Not later than the 30th day after the date a supplier receives a warranty claim from a dealer, the supplier shall accept or reject the claim. A claim not rejected before that date is considered accepted.

(b) Not later than the 30th day after the date a warranty claim is accepted or rejected, the supplier shall:

(1) pay the accepted claim; or

(2) send the dealer written notice of the grounds for rejecting the claim.

(c) A supplier, including a supplier of an electric engine or motor, who pays a claim may not pay less than the hourly labor rate and other expenses involved in the work that the dealer regularly charges to a retail customer who does not assert a warranty and the dealer's net price plus 15 percent for parts. The number of hours of labor claimed may not exceed 1-1/2 times the supplier's recommended hours for the work. (Bus. & Com. Code, Secs. 19.28(b), (c), (d).)

Sec. 55.103. SUPPLIER'S RECOVERY OF WARRANTY CLAIM. After paying a warranty claim, a supplier may not charge back, set off, or otherwise attempt to recover all or part of the amount of the claim unless:

(1) the claim was fraudulent;

(2) the work for which the claim was made was not properly performed or was unnecessary to comply with the warranty; or

(3) the dealer did not substantiate the claim according to the supplier's written requirements in effect when the claim arose. (Bus. & Com. Code, Sec. 19.28(e).)

Sec. 55.104. PURCHASER'S WARRANTY AGREEMENT. A dealer or supplier authorized to sell new farm, industrial, or outdoor power equipment shall give the purchaser a written warranty agreement including replacement or cash refund. If the dealer determines the equipment cannot be made usable, the manufacturer is liable to the purchaser for the replacement or cash refund. (Bus. & Com. Code, Sec. 19.28(f).)

[Sections 55.105-55.150 reserved for expansion]

SUBCHAPTER D. DELIVERY, SALE, AND RETURN OF EQUIPMENT

Sec. 55.151. COERCED ORDERS, DELIVERIES, OR REFUSALS TO PURCHASE PROHIBITED. A supplier may not coerce or compel a dealer to:

(1) order or accept delivery of equipment with a special feature or accessory not included in the base list price of the equipment as publicly advertised by the supplier unless the special feature or accessory is a safety feature or accessory

required by the supplier or by applicable law; or

(2) refuse to purchase equipment manufactured by another manufacturer. (Bus. & Com. Code, Sec. 19.22.)

Sec. 55.152. DISCRIMINATION AMONG DEALERS. (a) A supplier may not discriminate among dealers in the supplier's delivery, in reasonable quantities and within a reasonable time after receipt of a dealer's order, of equipment covered by the dealer agreement and specifically represented by the supplier as available for immediate delivery.

(b) Subsection (a) does not apply if the discrimination is because of:

(1) the supplier's restrictions on extending credit to the dealer;

(2) the dealer's default under a dealership agreement; or

(3) an act of God, work stoppage or delay because of a strike or labor difficulty, bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control. (Bus. & Com. Code, Sec. 19.23.)

Sec. 55.153. LATE DELIVERY OF BACK-ORDERED SEASONAL DEMAND ITEM. (a) Unless the supplier notifies a dealer of the status of a back-ordered item before shipment of the item to the dealer, a dealer may reject the delivery of an item of equipment other than a repair part or attachment from a supplier if:

(1) the item has special value in a particular time of year because of predictable seasonal demand and is less marketable and less valuable after the seasonal demand period ends;

(2) the item was back-ordered and delivery is made after the seasonal demand period ends; and

(3) the dealer sends written notice of the rejection to the supplier before the 11th day after the delivery of the item.

(b) The supplier shall pay the costs of the return of an item the delivery of which is rejected under Subsection (a).

(c) A supplier may not coerce or compel a dealer to accept late delivery of back-ordered seasonal demand equipment other than repair parts or attachments. (Bus. & Com. Code, Sec. 19.24.)

Sec. 55.154. SALES TO AFFILIATED DEALER. (a) In this section, "affiliated dealer" means a dealer in which a supplier has an ownership interest.

(b) Except as provided by Subsection (c), a supplier may not:

(1) sell or offer to sell new or unused equipment to an affiliated dealer at a price lower than the price for a sale of the same equipment, identically equipped, to a nonaffiliated dealer; or

(2) use a sales promotion plan or other program or device that results in a sale or offer of sale of new or unused equipment to an affiliated dealer at an actual price that is:

(A) lower than the price for a nonaffiliated dealer; or

(B) fixed and predetermined solely by the supplier.

(c) This section does not apply to sales made to a dealer for resale to:

(1) a unit, agency, or political subdivision of the

United States or this state;

(2) a major fleet account; or

(3) an organization for testing or demonstrating the equipment. (Bus. & Com. Code, Secs. 19.01(1), 19.25.)

Sec. 55.155. RETURN OF INVENTORY; RESPONSIBILITY FOR COSTS. (a) If on termination of a dealer agreement the dealer delivers to the supplier or a person designated by the supplier inventory purchased from the supplier and held by the dealer on the date of the termination, the supplier shall pay to the dealer:

(1) the dealer cost of new, unsold, undamaged, and complete equipment, other than repair parts, returned by the dealer; and

(2) an amount equal to:

(A) 85 percent of the current price of new, undamaged repair parts returned by the dealer, if the supplier handles, packs, and loads the parts; or

(B) 90 percent of the current price of new, undamaged repair parts returned by the dealer, if the supplier does not handle, pack, or load the parts.

(b) Before returning inventory under this section and not later than the 120th day after the effective date of termination, the dealer shall submit to the supplier a list of the inventory the dealer intends to return, including, to the extent possible, each item's trade name, description, and serial number. Not later than the 60th day after the date the supplier receives the list, the supplier shall notify the dealer in writing of:

(1) each item that the supplier claims is not subject

to reimbursement under this section; and

(2) the destination for each item the dealer is to deliver to a person designated by the supplier.

(c) The supplier may subtract from the amount owed under Subsection (a) the amount of debt owed by the dealer to the supplier.

(d) The supplier and dealer are each responsible for one-half of the cost of delivering the inventory to the supplier or a person designated by the supplier, except that if the dealer delivers an item to a person designated by the supplier the dealer is not responsible for the amount that exceeds the amount for which the dealer would have been responsible if the item had been delivered to the supplier.

(e) The supplier shall pay the amount owed under this section:

(1) before the 91st day after the date the supplier or person designated by the supplier receives inventory from the dealer; and

(2) after the dealer has furnished proof that the inventory was purchased from the supplier.

(f) On payment of the amount owed under this section, title to the inventory is transferred to the supplier or person designated by the supplier.

(g) A supplier and dealer may by agreement alter the time limits provided by this section. (Bus. & Com. Code, Sec. 19.43.)

Sec. 55.156. RETURN OF DATA PROCESSING OR PERIPHERAL EQUIPMENT, SOFTWARE, OR CERTAIN TOOLS; RESPONSIBILITY FOR COSTS.

(a) If on termination of a dealer agreement the dealer delivers to the supplier data processing or peripheral equipment, software, or specialized repair tools that the supplier required the dealer to purchase or lease, the supplier shall:

(1) assume any responsibilities of the dealer under the lease for that equipment or software; and

(2) pay the dealer:

(A) an amount equal to the fair market value of the data processing or peripheral equipment or software purchased by the dealer and delivered to the supplier; and

(B) an amount equal to 75 percent of the cost to the dealer of the specialized repair tools purchased by the dealer and delivered to the supplier.

(b) The supplier and dealer are each responsible for one-half of the cost of delivering the data processing or peripheral equipment, software, or specialized repair tools to the supplier.

(c) The supplier shall assume the responsibilities under the lease and pay the amount required by this section before the 61st day after the date the supplier receives the data processing or peripheral equipment, software, or specialized repair tools.

(d) On payment of the amount required by this section, title or the right of possession to the data processing or peripheral equipment or specialized repair tools purchased or leased by the dealer is transferred to the supplier. (Bus. & Com. Code, Sec. 19.44.)

Sec. 55.157. SUPPLIER'S LIABILITY FOR LATE PAYMENT. A

supplier who does not make a payment required by Section 55.155 or 55.156 before the 61st day after the date the supplier receives the final shipment of the inventory, data processing or peripheral equipment, software, or specialized repair tools from the dealer is liable to the dealer for:

(1) the greater of the dealer cost or current price of any inventory;

(2) any cost to the dealer of the data processing or peripheral equipment, software, or specialized repair tools;

(3) any expense incurred by the dealer in returning the inventory, data processing or peripheral equipment, software, or specialized repair tools to the supplier;

(4) interest on any amounts owed under Subdivision (1), (2), or (3), at the rate applicable to a judgment of a court of this state, beginning on the 61st day after the date the supplier received the inventory, data processing or peripheral equipment, software, or specialized repair tools;

(5) reasonable attorney's fees; and

(6) court costs. (Bus. & Com. Code, Sec. 19.47.)

Sec. 55.158. EXCEPTIONS TO SUPPLIER'S REPURCHASE, PURCHASE, OR ASSUMPTION RESPONSIBILITY. (a) A supplier is not required to repurchase:

(1) inventory:

(A) that the dealer orders after the dealer receives notice of the termination of the dealer agreement from the supplier; or

(B) for which the dealer cannot furnish evidence

of clear title that is satisfactory to the supplier; or

(2) a repair part that:

(A) has a limited storage life and was purchased from the supplier more than two years before the date of termination of the dealer agreement;

(B) is in a broken or damaged package;

(C) is usually sold as part of a set, if the part is separated from the set; or

(D) cannot be sold without reconditioning or repackaging.

(b) A supplier is not required to purchase or assume the responsibilities under the lease for:

(1) data processing or peripheral equipment or software that the dealer purchased that was not specifically required by the supplier; or

(2) a specialized repair tool that:

(A) is not unique to the supplier's product line;

(B) is not in complete and salable condition; or

(C) was not purchased by the dealer within the three-year period preceding the date of termination of the dealer agreement. (Bus. & Com. Code, Sec. 19.45.)

[Sections 55.159-55.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 55.201. ACTION FOR VIOLATION OF CHAPTER. A person injured by a violation of this chapter may bring an action for:

(1) an injunction to prevent further violation;

(2) damages;

(3) reasonable attorney's fees; and

(4) costs. (Bus. & Com. Code, Sec. 19.02.)

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE A. GENERAL PRACTICES

CHAPTER 71. ASSUMED BUSINESS OR PROFESSIONAL NAME

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. SHORT TITLE

Sec. 71.002. DEFINITIONS

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Sec. 71.153. ABANDONMENT OF USE OF BUSINESS OR PROFESSIONAL NAME

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Sec. 71.155. FILING FEES

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Sec. 71.158. FILING OF REPRODUCTION

[Sections 71.159-71.200 reserved for expansion]

SUBCHAPTER E. PENALTIES

Sec. 71.201. CIVIL ACTION; SANCTION

Sec. 71.202. CRIMINAL PENALTY: GENERAL VIOLATION

Sec. 71.203. CRIMINAL PENALTY: FRAUDULENT FILING

CHAPTER 71. ASSUMED BUSINESS OR PROFESSIONAL NAME

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. SHORT TITLE. This chapter may be cited as the Assumed Business or Professional Name Act. (Bus. & Com. Code, Sec. 36.01.)

Sec. 71.002. DEFINITIONS. In this chapter:

(1) "Address" means:

(A) a post office address; and

(B) a street address, if the street address is not the same as the post office address.

(2) "Assumed name" means:

(A) for an individual, a name that does not include the surname of the individual;

(B) for a partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) for an individual or a partnership, a name, including a surname, that suggests the existence of additional owners by including words such as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and similar words, but not words that merely describe the business being conducted or the professional service being rendered;

(D) for a limited partnership, a name other than the name stated in its certificate of formation;

(E) for a company, a name used by the company;

(F) for a corporation, a name other than the name stated in its certificate of formation or a comparable document;

(G) for a registered limited liability partnership, a name other than the name stated in its application filed with the office of the secretary of state or a comparable document; and

(H) for a limited liability company, a name other than the name stated in its certificate of formation or a comparable document.

(3) "Certificate" means an assumed name certificate.

(4) "Company" means a real estate investment trust, a joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated, other than a partnership, limited partnership, limited liability company, or registered limited liability partnership.

(5) "Corporation" means:

(A) a domestic or foreign corporation, professional corporation, professional association, or other corporation; or

(B) any other business, professional, or other association or legal entity that is incorporated.

(6) "Estate" means a person's property that is administered by a representative.

(7) "Office" means:

(A) for a person that is not an individual or that is a corporation that is not required to or does not maintain a registered office in this state, the person's:

(i) principal office; and

(ii) principal place of business if not the same as the person's principal office; and

(B) for a corporation, limited partnership, registered limited liability partnership, or limited liability company that is required to maintain a registered office in this state, the entity's:

(i) registered office; and

(ii) principal office if not the same as the entity's registered office.

(8) "Partnership" means a joint venture or general partnership other than a limited partnership or a registered limited liability partnership.

(9) "Person" includes an individual, partnership, limited partnership, limited liability company, registered limited liability partnership, company, or corporation.

(10) "Registrant" means a person who has filed, or on whose behalf there has been filed, a certificate under this chapter or other law.

(11) "Representative" means a trustee, administrator, executor, independent executor, guardian, conservator, trustee in bankruptcy, receiver, or other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person. (Bus. & Com. Code, Sec. 36.02; New.)

Sec. 71.003. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to an insurer authorized to engage in business in this state and described in Subchapter A, Chapter 805, Insurance Code, except as specifically provided by the Insurance Code.

(b) This chapter does not require a corporation, limited partnership, registered limited liability partnership, or limited liability company or its shareholders, associates, partners, or members to file a certificate to conduct business or render a professional service in this state under the name of the entity as stated in the certificate of formation, application filed with the office of the secretary of state, or other comparable document of the entity. (Bus. & Com. Code, Secs. 36.03, 36.11(c).)

[Sections 71.004-71.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS APPLICABLE TO CERTAIN UNINCORPORATED PERSONS

Sec. 71.051. CERTIFICATE FOR CERTAIN UNINCORPORATED PERSONS. A person must file a certificate under this subchapter if the person regularly conducts business or renders a professional service in this state under an assumed name other than as a corporation, limited partnership, registered limited liability partnership, or limited liability company. (Bus. & Com. Code, Sec. 36.10(a) (part).)

Sec. 71.052. CONTENTS OF CERTIFICATE. The certificate must state:

(1) the assumed name under which the business is or is to be conducted or the professional service is or is to be rendered;

(2) if the registrant is:

(A) an individual, the individual's full name and residence address;

(B) a partnership:

(i) the venture or partnership name;

(ii) the venture or partnership office address;

(iii) the full name of each joint venturer or general partner; and

(iv) each joint venturer's or general partner's residence address if the venturer or partner is an individual or the joint venturer's or general partner's office address if the venturer or partner is not an individual;

(C) an estate:

(i) the name of the estate;

(ii) the estate's office address, if any;

(iii) the full name of each representative of the estate; and

(iv) each representative's residence address if the representative is an individual or the representative's office address if the representative is not an individual;

(D) a real estate investment trust:

(i) the name of the trust;

(ii) the address of the trust;

(iii) the full name of each trustee manager; and

(iv) each trustee manager's residence address if the trustee manager is an individual or the trustee manager's office address if the trustee manager is not an individual; or

(E) a company, other than a real estate investment trust, or a corporation:

(i) the name of the company or corporation;

(ii) the state, country, or other jurisdiction under the laws of which the company or corporation was organized or incorporated; and

(iii) the company's or corporation's office address;

(3) the period, not to exceed 10 years, during which

the registrant will use the assumed name; and

(4) a statement specifying that the business that is or will be conducted or the professional service that is or will be rendered in the county under the assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, partnership, real estate investment trust, joint-stock company, or other form of unincorporated business or professional association or entity other than a limited partnership, limited liability company, or registered limited liability partnership. (Bus. & Com. Code, Sec. 36.10(a) (part).)

Sec. 71.053. EXECUTION OF CERTIFICATE. (a) The certificate must be executed and acknowledged:

(1) by each individual whose name is required to be stated in the certificate or the individual's representative or attorney-in-fact; and

(2) under oath on behalf of each person whose name is required to be stated in the certificate and who is not an individual, by:

(A) the person's representative or attorney-in-fact; or

(B) a joint venturer, general partner, trustee manager, officer, or other person having authority regarding the person comparable to the person's representative or attorney-in-fact.

(b) A certificate executed and acknowledged by an attorney-in-fact must include a statement that the attorney has been authorized in writing by the attorney's principal to execute

and acknowledge the certificate. (Bus. & Com. Code, Sec. 36.10(b).)

Sec. 71.054. PLACE OF FILING. A person shall file the certificate in the office of the county clerk in each county in which the person:

(1) has or will maintain business or professional premises; or

(2) conducts business or renders a professional service, if the person does not or will not maintain business or professional premises in any county. (Bus. & Com. Code, Sec. 36.10(a) (part).)

[Sections 71.055-71.100 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS APPLICABLE TO INCORPORATED BUSINESS OR PROFESSION AND CERTAIN OTHER ENTITIES

Sec. 71.101. CERTIFICATE FOR INCORPORATED BUSINESS OR PROFESSION, LIMITED PARTNERSHIP, REGISTERED LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY. A corporation, limited partnership, registered limited liability partnership, or limited liability company must file a certificate under this subchapter if the entity:

(1) regularly conducts business or renders professional services in this state under an assumed name; or

(2) is required by law to use an assumed name in this state to conduct business or render professional services. (Bus. & Com. Code, Sec. 36.11(a) (part).)

Sec. 71.102. CONTENTS OF CERTIFICATE. The certificate must state:

(1) the assumed name under which the business is or is to be conducted or the professional service is or is to be rendered;

(2) the registrant's name as stated in the registrant's certificate of formation or application filed with the office of the secretary of state or other comparable document;

(3) the state, country, or other jurisdiction under the laws of which the registrant was incorporated or organized and the registrant's registered or similar office address in that state, country, or jurisdiction;

(4) the period, not to exceed 10 years, during which the registrant will use the assumed name;

(5) a statement specifying that the registrant is:

(A) a business corporation, nonprofit corporation, professional corporation, professional association, or other type of corporation;

(B) a limited partnership, registered limited liability partnership, or limited liability company; or

(C) another type of incorporated business, professional or other association, or legal entity;

(6) the address of:

(A) the registrant's:

(i) registered office in this state and the name of its registered agent at that address; and

(ii) principal office, if the principal office address is not the same as the registrant's registered office address in this state; or

(B) if the registrant is not required to or does

not maintain a registered office in this state:

(i) the registrant's office in this state; and

(ii) the registrant's place of business in this state and any office of the registrant outside this state, if the registrant is not incorporated or organized under the laws of this state; and

(7) the county or counties in this state where the registrant is or will be conducting business or rendering professional services under the assumed name. (Bus. & Com. Code, Sec. 36.11(a) (part).)

Sec. 71.103. PLACE OF FILING. (a) The corporation, limited partnership, registered limited liability partnership, or limited liability company shall file the certificate in the office of the secretary of state and in the office or offices of each county clerk as specified by Subsection (b) or (c).

(b) Except as provided by Subsection (c), the entity shall file the certificate in the offices of the county clerk of the county in which the entity's:

(1) registered office is located; and

(2) principal office is located if the principal office is in this state and not in the same county where the registered office is located.

(c) If the entity is not required to or does not maintain a registered office in this state, the entity shall file the certificate:

(1) in the office of the county clerk of the county in

which the entity's office in this state is located; or

(2) in the office of the county clerk of the county in which the entity's principal place of business in this state is located, if:

(A) the entity is not incorporated or organized under the laws of this state; and

(B) the county in which the entity's principal place of business in this state is located is not the same county where the entity's office is located. (Bus. & Com. Code, Sec. 36.11(a) (part).)

Sec. 71.104. EXECUTION OF CERTIFICATE. (a) A certificate filed in the secretary of state's office must be executed by an officer, general partner, member, manager, or representative of or attorney-in-fact for the registrant.

(b) A certificate filed in a county clerk's office must be executed and acknowledged in the manner provided by Section 71.053 for a certificate filed under that section.

(c) A certificate executed by an attorney-in-fact must include a statement that the attorney has been authorized in writing by the attorney's principal to execute the certificate. (Bus. & Com. Code, Sec. 36.11(b).)

[Sections 71.105-71.150 reserved for expansion]

SUBCHAPTER D. GENERAL PROVISIONS REGARDING ASSUMED NAME CERTIFICATE

Sec. 71.151. DURATION AND RENEWAL OF CERTIFICATE. (a) A certificate is effective for a term not to exceed 10 years from the date the certificate is filed.

(b) A certificate is void at the end of the certificate's stated term, unless within six months preceding the certificate's expiration date the registrant files in the office of a county clerk and the secretary of state, if applicable, a renewal certificate complying with the requirements of this chapter for an original certificate.

(c) A registrant may renew a certificate under this section for any number of successive terms, but each term may not exceed 10 years. (Bus. & Com. Code, Sec. 36.13.)

Sec. 71.152. MATERIAL CHANGE IN INFORMATION; NEW CERTIFICATE. (a) Not later than the 60th day after an event occurs that causes the information in a certificate to become materially misleading, a registrant must file a new certificate complying with this chapter in the office in which the original or renewal certificate was filed.

(b) An event that causes the information in a certificate to become materially misleading includes:

(1) a change in the name, identity, entity, form of business or professional organization, or location of a registrant;

(2) for a proprietorship or sole practitioner, a change in ownership;

(3) for a partnership:

(A) the admission of a new partner or joint venturer; or

(B) the end of a general partner's or joint venturer's association with the partnership; or

(4) for a registrant required by law to maintain a

registered office or similar office and a registered agent or similar agent at that office, a change in the address of the office or in the identity of the agent.

(c) A new certificate filed under this section is effective for a term not to exceed 10 years from the date the certificate is filed. (Bus. & Com. Code, Sec. 36.12.)

Sec. 71.153. ABANDONMENT OF USE OF BUSINESS OR PROFESSIONAL NAME. (a) A registrant who has filed a certificate under this chapter and who ceases to conduct business or render professional services in this state under the assumed name stated in the certificate may file a statement of abandonment of use of the assumed name in the office in which the registrant's certificate was filed.

(b) The statement of abandonment of use of an assumed name must state:

(1) the assumed name being abandoned;

(2) the date on which the certificate was filed in the office in which the statement of abandonment is being filed and in any other office in which the certificate was filed; and

(3) the registrant's name and residence or office address as required for a certificate filed under this chapter.

(c) A statement of abandonment must be executed and acknowledged in the same manner as if the registrant were filing a certificate under this chapter. (Bus. & Com. Code, Sec. 36.14.)

Sec. 71.154. INDEX OF CERTIFICATES. (a) The secretary of state and each county clerk shall keep an alphabetical index of:

(1) all assumed names that have been filed in the

office of the respective officer; and

(2) the persons filing the certificates.

(b) A copy of a certificate or statement is presumptive evidence in any court in this state of the facts contained in the copy if the copy is certified to by:

(1) the county clerk in whose office the certificate or statement was filed; or

(2) the secretary of state. (Bus. & Com. Code, Sec. 36.15 (part).)

Sec. 71.155. FILING FEES. (a) The county clerk shall collect a fee of:

(1) $2 for filing each certificate or statement required or permitted to be filed under this chapter; and

(2) 50 cents for each name to be indexed.

(b) The secretary of state shall collect for the use of this state a fee of:

(1) $25 for indexing and filing each certificate or statement required or permitted to be filed under this chapter; and

(2) $10 for filing each statement of abandonment of use of an assumed name. (Bus. & Com. Code, Sec. 36.15 (part).)

Sec. 71.156. PRESCRIBED FORMS. (a) The secretary of state may prescribe a form to be used for filing a certificate or statement that complies with this chapter in the secretary's office or in the office of any county clerk in this state.

(b) Unless otherwise specifically provided by law, the use of a form prescribed under this section is not mandatory. (Bus. & Com. Code, Sec. 36.16.)

Sec. 71.157. EFFECT OF FILING. (a) This chapter does not give a registrant a right to use the assumed name in violation of the common or statutory law of unfair competition or unfair trade practices, common law copyright, or similar law.

(b) The filing of a certificate under this chapter does not in itself constitute actual use of the assumed name stated in the certificate for purposes of determining priority of rights. (Bus. & Com. Code, Sec. 36.17.)

Sec. 71.158. FILING OF REPRODUCTION. (a) The secretary of state may accept for filing a photographic, photostatic, or similar reproduction of a signed original document required or authorized to be filed in the secretary's office under this chapter.

(b) A signature on a document required or authorized to be filed in the secretary of state's office under this chapter may be a facsimile. (Bus. & Com. Code, Sec. 36.18.)

[Sections 71.159-71.200 reserved for expansion]

SUBCHAPTER E. PENALTIES

Sec. 71.201. CIVIL ACTION; SANCTION. (a) A person's failure to comply with this chapter does not impair the validity of any contract or act by the person or prevent the person from defending any action or proceeding in any court of this state, but the person may not maintain in a court of this state an action or proceeding arising out of a contract or act in which an assumed name was used until an original, new, or renewed certificate has been filed as required by this chapter.

(b) In an action or proceeding brought against a person who has not complied with this chapter, the court may award the

plaintiff or other party bringing the action or proceeding expenses incurred, including attorney's fees, in locating and effecting service of process on the defendant. (Bus. & Com. Code, Sec. 36.25.)

Sec. 71.202. CRIMINAL PENALTY: GENERAL VIOLATION. (a) A person commits an offense if the person:

(1) conducts business or renders a professional service in this state under an assumed name; and

(2) intentionally violates this chapter.

(b) An offense under this section is a Class A misdemeanor. (Bus. & Com. Code, Sec. 36.26.)

Sec. 71.203. CRIMINAL PENALTY: FRAUDULENT FILING. (a) A person may not knowingly or intentionally sign and present for filing or cause to be presented for filing a document authorized or required to be filed under this chapter that:

(1) indicates that the person signing the document has the authority to act on behalf of the entity for which the document is presented and the person does not have that authority;

(2) contains a material false statement; or

(3) is forged.

(b) A person commits an offense if the person violates Subsection (a). An offense under this subsection is punishable as if it were an offense under Section 37.10, Penal Code. (Bus. & Com. Code, Sec. 36.27.)

CHAPTER 72. BUSINESS RECORDS

SUBCHAPTER A. DISPOSAL OF CERTAIN BUSINESS RECORDS

Sec. 72.001. DEFINITIONS

Sec. 72.002. DESTRUCTION OF CERTAIN BUSINESS RECORDS

Sec. 72.003. RETENTION OF REPRODUCTION OF BUSINESS RECORDS

Sec. 72.004. DISPOSAL OF BUSINESS RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION

[Sections 72.005-72.050 reserved for expansion]

SUBCHAPTER B. DELETION OF CERTAIN RECORDS OR INFORMATION RELATING TO CUSTOMERS' CHECKS

Sec. 72.051. REQUIRED DELETION OF CERTAIN ELECTRONIC RECORDS

CHAPTER 72. BUSINESS RECORDS

SUBCHAPTER A. DISPOSAL OF CERTAIN BUSINESS RECORDS

Sec. 72.001. DEFINITIONS. In this subchapter:

(1) "Business record" means letters, words, sounds, or numbers, or the equivalent of letters, words, sounds, or numbers, recorded in the operation of a business by:

(A) handwriting;

(B) typewriting;

(C) printing;

(D) photostat;

(E) photograph;

(F) magnetic impulse;

(G) mechanical or electronic recording;

(H) digitized optical image; or

(I) another form of data compilation.

(2) "Personal identifying information" means an individual's first name or initial and last name in combination

with one or more of the following:

(A) date of birth;

(B) social security number or other government-issued identification number;

(C) mother's maiden name;

(D) unique biometric data, including the individual's fingerprint, voice data, or retina or iris image;

(E) unique electronic identification number, address, or routing code;

(F) telecommunication access device as defined by Section 32.51, Penal Code, including debit or credit card information; or

(G) financial institution account number or any other financial information.

(3) "Reproduction" means a counterpart of an original business record produced by:

(A) production from the same impression or the same matrix as the original;

(B) photography, including an enlargement or miniature;

(C) mechanical or electronic rerecording;

(D) chemical reproduction;

(E) digitized optical imaging; or

(F) another technique that accurately reproduces the original. (Bus. & Com. Code, Sec. 35.48(a).)

Sec. 72.002. DESTRUCTION OF CERTAIN BUSINESS RECORDS. (a) A business record required to be retained by a law of this state may

be destroyed at any time after the third anniversary of the date the business record was created.

(b) Subsection (a) does not apply if a law or rule applicable to the business record prescribes a different retention period or procedure for disposal. (Bus. & Com. Code, Sec. 35.48(b).)

Sec. 72.003. RETENTION OF REPRODUCTION OF BUSINESS RECORDS. A law of this state that requires retention of a business record is satisfied by retention of a reproduction of the original record. (Bus. & Com. Code, Sec. 35.48(c).)

Sec. 72.004. DISPOSAL OF BUSINESS RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION. (a) This section does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code.

(b) When a business disposes of a business record that contains personal identifying information of a customer of the business, the business shall modify, by shredding, erasing, or other means, the personal identifying information so as to make the information unreadable or undecipherable.

(c) A business is considered to comply with Subsection (b) if the business contracts with a person engaged in the business of disposing of records for the modification of personal identifying information on behalf of the business in accordance with that subsection.

(d) A business that disposes of a business record without complying with Subsection (b) is liable for a civil penalty in an amount not to exceed $500 for each business record. The attorney general may bring an action against the business to:

(1) recover the civil penalty;

(2) obtain any other remedy, including injunctive relief; and

(3) recover costs and reasonable attorney's fees incurred in bringing the action.

(e) A business that in good faith modifies a business record as required by Subsection (b) is not liable for a civil penalty under Subsection (d) if the business record is reconstructed, wholly or partly, through extraordinary means.

(f) Subsection (b) does not require a business to modify a business record if:

(1) the business is required to retain the business record under another law; or

(2) the business record is historically significant and:

(A) there is no potential for identity theft or fraud while the business retains custody of the business record; or

(B) the business record is transferred to a professionally managed historical repository. (Bus. & Com. Code, Secs. 35.48(d), (e), (f), (g), (h), (i).)

[Sections 72.005-72.050 reserved for expansion]

SUBCHAPTER B. DELETION OF CERTAIN RECORDS OR INFORMATION RELATING TO CUSTOMERS' CHECKS

Sec. 72.051. REQUIRED DELETION OF CERTAIN ELECTRONIC RECORDS. (a) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(b) This section applies only to a business that accepts checks from customers in the ordinary course of business. This section does not apply to a financial institution as defined by 31 U.S.C. Section 5312(a)(2), as amended.

(c) A business shall delete any electronic record indicating that a customer has issued a dishonored check or any other information except for a checking account number or bank routing transit number on which the business bases a refusal to accept a check from a customer. The record must be deleted not later than the 30th day after the date:

(1) the customer and the business agree that the information contained in the electronic record is incorrect; or

(2) the customer presents to the business:

(A) a copy of a report filed by the customer with a law enforcement agency stating that the dishonored check was unauthorized; and

(B) a written statement of the customer indicating that the dishonored check was unauthorized.

(d) A business that violates Subsection (c) is liable to this state for a civil penalty in an amount not to exceed $1,000. The attorney general may:

(1) bring an action to recover the civil penalty; and

(2) recover reasonable expenses incurred in recovering the penalty, including court costs, reasonable

attorney's fees, investigative costs, witness fees, and deposition expenses. (Bus. & Com. Code, Sec. 35.62.)

[Chapters 73-90 reserved for expansion]

SUBTITLE B. RENTAL PRACTICES

CHAPTER 91. PRIVATE PASSENGER VEHICLE RENTAL COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS

[Sections 91.002-91.050 reserved for expansion]

SUBCHAPTER B. DAMAGE WAIVERS AND MANDATORY CHARGES

Sec. 91.051. WRITTEN AGREEMENT REQUIRED FOR DAMAGE WAIVER

Sec. 91.052. NOTICE TO RENTER

Sec. 91.053. POSTED NOTICE

Sec. 91.054. PROHIBITED REPRESENTATIONS AND COERCION

Sec. 91.055. MANDATORY CHARGE

Sec. 91.056. VOIDING OF DAMAGE WAIVER

[Sections 91.057-91.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT PROVISIONS

Sec. 91.101. CIVIL PENALTY

Sec. 91.102. INJUNCTION

Sec. 91.103. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF

CHAPTER 91. PRIVATE PASSENGER VEHICLE RENTAL COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Authorized driver" means:

(A) the renter;

(B) a person whom the rental company expressly designates on the rental agreement as an authorized driver;

(C) the renter's spouse if the spouse:

(i) holds a driver's license; and

(ii) satisfies any minimum age requirement established by the rental company;

(D) an employer, employee, or coworker of the renter if the person:

(i) holds a driver's license;

(ii) satisfies any minimum age requirement established by the rental company; and

(iii) is engaged in a business activity with the renter at the time of the rental; or

(E) a person who:

(i) holds a driver's license; and

(ii) is driving directly to a medical or police facility under circumstances reasonably believed to constitute an emergency.

(2) "Damage" means damage to or loss of a rented vehicle, regardless of fault involved in the damage or loss. The term includes:

(A) theft and loss of use; and

(B) any cost incident to the damage or loss, including storage, impound, towing, and administrative charges.

(3) "Damage waiver" means a rental company's agreement not to hold an authorized driver liable for all or part of any damage to a rented vehicle.

(4) "Mandatory charge" means a charge for an item or service provided in connection with a rental transaction, other than a charge imposed by law:

(A) that is in addition to the base rental rate; and

(B) that the renter may not avoid or decline.

(5) "Private passenger vehicle" means a motor vehicle of the private passenger type, including a passenger van, primarily intended for private use.

(6) "Rental agreement" means an agreement for 30 days or less that states the terms governing the use of a private passenger vehicle rented by a rental company.

(7) "Rental company" means a person in the business of renting private passenger vehicles to the public for 30 days or less. The term does not include a person who holds a license under Chapter 2301, Occupations Code, and whose primary business activity is not renting private passenger vehicles.

(8) "Renter" means a person who obtains use of a private passenger vehicle from a rental company under a rental agreement. (V.A.C.S. Art. 9026c, Secs. 1, 4(a).)

[Sections 91.002-91.050 reserved for expansion]

SUBCHAPTER B. DAMAGE WAIVERS AND MANDATORY CHARGES

Sec. 91.051. WRITTEN AGREEMENT REQUIRED FOR DAMAGE WAIVER. A rental company may not sell a damage waiver unless the renter agrees to the damage waiver in writing at or before the time the rental agreement is executed. (V.A.C.S. Art. 9026c, Sec. 2(a).)

Sec. 91.052. NOTICE TO RENTER. (a) A rental company shall

provide each renter who purchases a damage waiver, the charge for which is not included in the base rental rate, the following notice:

NOTICE: Your rental agreement offers, for an additional charge, an optional waiver to cover all or a part of your responsibility for damage to or loss of the vehicle. Before deciding whether to purchase the waiver, you may wish to determine whether your own automobile insurance or credit card agreement provides you coverage for rental vehicle damage or loss and determine the amount of the deductible under your own insurance coverage. The purchase of the waiver is not mandatory. The waiver is not insurance.

(b) The notice under Subsection (a) must be in at least 10-point type. (V.A.C.S. Art. 9026c, Sec. 3(a).)

Sec. 91.053. POSTED NOTICE. In addition to providing the notice required by Section 91.052, a rental company shall post in a conspicuous location where the damage waiver is offered the following notice:

Notice to Texas Residents Regarding Damage Waivers

Your personal automobile insurance policy may or may not provide coverage for your responsibility for the loss of or damage to a rented vehicle during the rental term. Before deciding whether to purchase a damage waiver, you may wish to determine whether your automobile insurance policy provides you coverage for rental vehicle damage or loss. If you file a claim under your personal automobile insurance policy, your

insurance company may choose to nonrenew your policy at your renewal date, but may do so only if you are at fault for the claim.

(V.A.C.S. Art. 9026c, Sec. 3(b).)

Sec. 91.054. PROHIBITED REPRESENTATIONS AND COERCION. (a) An employee or agent of a rental company may not:

(1) make an oral or written representation that contradicts this chapter; or

(2) use coercive language or a coercive act in an attempt to persuade a renter to purchase a damage waiver.

(b) For purposes of this section, if the renter has declined the damage waiver, a further statement or question by the employee or agent that refers to the damage waiver, other than a statement made in conjunction with review of the rental agreement that the waiver has been declined, is considered coercive. (V.A.C.S. Art. 9026c, Sec. 5.)

Sec. 91.055. MANDATORY CHARGE. (a) A rental company that includes a mandatory charge in a rental agreement shall prominently display and fully disclose the charge:

(1) separately on the face of the agreement; and

(2) in all of the rental company's price advertising, price quotes, price offers, and price displays, including displays in computerized reservation systems.

(b) A rental company may not impose or require the purchase of a damage waiver as a mandatory charge. (V.A.C.S. Art. 9026c, Secs. 4(b), (c).)

Sec. 91.056. VOIDING OF DAMAGE WAIVER. A rental company may

not void a damage waiver unless:

(1) an authorized driver causes the damage intentionally or by wilful and wanton misconduct;

(2) the damage arises out of use of the vehicle:

(A) by a person:

(i) who is not an authorized driver;

(ii) while under the influence of an intoxicant that impairs driving ability, including alcohol, an illegal drug, or a controlled substance; or

(iii) while engaged in commission of a crime other than a traffic infraction;

(B) to carry persons or property for hire;

(C) to push or tow anything;

(D) for driver's training;

(E) to engage in a speed contest; or

(F) outside the continental United States, unless the rental agreement specifically authorizes the use; or

(3) the rental company entered into the rental transaction based on fraudulent information supplied by the renter. (V.A.C.S. Art. 9026c, Sec. 2(b).)

[Sections 91.057-91.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT PROVISIONS

Sec. 91.101. CIVIL PENALTY. A rental company that violates this chapter is liable for a civil penalty in an amount of not less than $500 or more than $1,000 for each act of violation. (V.A.C.S. Art. 9026c, Sec. 6(a).)

Sec. 91.102. INJUNCTION. A person injured or threatened

with injury by a violation of this chapter may seek injunctive relief against the person committing or threatening to commit the violation. (V.A.C.S. Art. 9026c, Sec. 6(c).)

Sec. 91.103. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF. The attorney general or a county or district attorney may bring an action in the name of the state for a civil penalty under Section 91.101, injunctive relief under Section 91.102, or both. (V.A.C.S. Art. 9026c, Sec. 6(b).)

CHAPTER 92. RENTAL-PURCHASE AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS

Sec. 92.002. ADVERTISEMENT REQUIREMENTS

[Sections 92.003-92.050 reserved for expansion]

SUBCHAPTER B. FORM AND CONTENT OF AGREEMENTS

Sec. 92.051. FORM OF AGREEMENT

Sec. 92.052. REQUIRED DISCLOSURES

Sec. 92.053. OTHER REQUIRED PROVISIONS

Sec. 92.054. PROHIBITED PROVISIONS

Sec. 92.055. RESTRICTIONS ON LATE CHARGES AND REINSTATEMENT FEES

[Sections 92.056-92.100 reserved for expansion]

SUBCHAPTER C. REPOSSESSION AND REINSTATEMENT

Sec. 92.101. MERCHANT'S REPOSSESSION RIGHT

Sec. 92.102. EFFECT OF REPOSSESSION DURING REINSTATEMENT PERIOD

Sec. 92.103. EFFECT ON REINSTATEMENT PERIOD OF MERCHANDISE RETURN

Sec. 92.104. MERCHANT'S DUTIES ON REINSTATEMENT

[Sections 92.105-92.150 reserved for expansion]

SUBCHAPTER D. LOSS DAMAGE WAIVERS

Sec. 92.151. CONTRACT FOR WAIVER

Sec. 92.152. CHARGE FOR WAIVER

Sec. 92.153. RESTRICTIONS ON MERCHANT CONCERNING WAIVER

Sec. 92.154. REQUIRED NOTICE IN WAIVER

Sec. 92.155. STATEMENT OF TOTAL CHARGE

Sec. 92.156. AUTHORIZED EXCLUSIONS

Sec. 92.157. RELATIONSHIP TO INSURANCE

Sec. 92.158. RULES FOR REVIEW OF CERTAIN CONTRACTS

Sec. 92.159. FEES

Sec. 92.160. ADMINISTRATIVE ENFORCEMENT OF SUBCHAPTER

[Sections 92.161-92.200 reserved for expansion]

SUBCHAPTER E. CIVIL ENFORCEMENT

Sec. 92.201. ACTION FOR VIOLATION OF CHAPTER

Sec. 92.202. DECEPTIVE TRADE PRACTICE

CHAPTER 92. RENTAL-PURCHASE AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message in any medium that directly or indirectly promotes or assists a rental-purchase agreement.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consumer" means an individual who leases personal

property under a rental-purchase agreement.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Loss damage waiver" means a merchant's agreement to not hold a consumer liable for loss from all or part of any damage to merchandise.

(6) "Merchandise" means the personal property that is the subject of a rental-purchase agreement.

(7) "Merchant" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of merchandise under a rental-purchase agreement. The term includes a person who is assigned an interest in a rental-purchase agreement.

(8) "Rental-purchase agreement" means an agreement under which a consumer may use merchandise for personal, family, or household purposes for an initial period of four months or less, and that:

(A) is automatically renewable with each payment after the initial period; and

(B) permits the consumer to become the owner of the merchandise. (Bus. & Com. Code, Secs. 35.71(1), (3), (3-a), (4), (5), (6), 35.722(a).)

Sec. 92.002. ADVERTISEMENT REQUIREMENTS. An advertisement for a rental-purchase agreement that refers to or states the amount of a payment or the right to acquire ownership of any one particular item under the agreement must clearly and conspicuously state:

(1) that the transaction advertised is a

rental-purchase agreement;

(2) the total amount and number of payments necessary to acquire ownership; and

(3) that the consumer does not acquire ownership rights unless the merchandise is rented for a specified number of payment periods. (Bus. & Com. Code, Sec. 35.73.)

[Sections 92.003-92.050 reserved for expansion]

SUBCHAPTER B. FORM AND CONTENT OF AGREEMENTS

Sec. 92.051. FORM OF AGREEMENT. (a) A rental-purchase agreement must be written in:

(1) plain English; and

(2) any other language used by the merchant in an advertisement related to the agreement.

(b) A numerical amount included in a rental-purchase agreement must be stated in figures.

(c) A disclosure required by this chapter must be printed or typed in each rental-purchase agreement in a size equal to at least 10-point boldfaced type.

(d) The attorney general shall provide a form agreement that may be used to satisfy the requirements of a rental-purchase agreement under this chapter. (Bus. & Com. Code, Secs. 35.72(a), (b).)

Sec. 92.052. REQUIRED DISCLOSURES. (a) A rental-purchase agreement must disclose:

(1) whether the merchandise is new or used;

(2) the price for which the merchant would have sold the merchandise to the consumer for cash on the date of the

agreement;

(3) the amount and timing of payments;

(4) the total number of payments necessary and the total amount to be paid to acquire ownership of the merchandise;

(5) that the consumer does not acquire ownership rights unless the consumer complies with the ownership terms of the agreement;

(6) the amount and purpose of any payment, charge, or fee in addition to the regular periodic payments; and

(7) whether the consumer is liable for loss or damage to the merchandise and, if so, the maximum amount for which the consumer may be liable.

(b) Notice of the right to reinstate the agreement must be disclosed in the agreement. (Bus. & Com. Code, Secs. 35.71(2), 35.72(f) (part), (g).)

Sec. 92.053. OTHER REQUIRED PROVISIONS. A rental-purchase agreement must provide that:

(1) any charge in addition to periodic payments must be reasonably related to the service performed; and

(2) a consumer who fails to make a timely payment may reinstate an agreement, without losing any right or option previously acquired, by taking the required action before the later of:

(A) one week after the due date of the payment; or

(B) the number of days after the due date of the payment that is equal to half the number of days in a regular payment period. (Bus. & Com. Code, Sec. 35.72(e).)

Sec. 92.054. PROHIBITED PROVISIONS. (a) A rental-purchase agreement may not:

(1) require a consumer to:

(A) pay a late charge or reinstatement fee except as provided by Section 92.055(b);

(B) make a payment at the end of the scheduled rental-purchase term in excess of or in addition to a regular periodic payment to acquire ownership of the merchandise; or

(C) purchase insurance or a loss damage waiver from the merchant to cover the merchandise;

(2) require a confession of judgment;

(3) authorize a merchant or an agent of the merchant to commit a breach of the peace in repossessing merchandise; or

(4) waive a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant.

(b) A consumer may not in any event be required to pay a sum greater than the total amount to be paid to acquire ownership of the merchandise as disclosed under Section 92.052(a)(4). (Bus. & Com. Code, Sec. 35.72(c) (part).)

Sec. 92.055. RESTRICTIONS ON LATE CHARGES AND REINSTATEMENT FEES. (a) Only one late charge or reinstatement fee may be collected on a payment regardless of the period during which the payment remains in default.

(b) A rental-purchase agreement may require the consumer to pay a late charge or reinstatement fee only if:

(1) a periodic payment is delinquent for more than:

(A) seven days, if the payment is due monthly; or

(B) three days, if the payment is due more frequently than monthly; and

(2) the charge or fee is in an amount not less than $5 and not more than the lesser of:

(A) $10; or

(B) 10 percent of the delinquent payment. (Bus. & Com. Code, Secs. 35.72(c) (part), (d).)

[Sections 92.056-92.100 reserved for expansion]

SUBCHAPTER C. REPOSSESSION AND REINSTATEMENT

Sec. 92.101. MERCHANT'S REPOSSESSION RIGHT. This chapter does not prevent a merchant from attempting repossession of merchandise during the reinstatement period. (Bus. & Com. Code, Sec. 35.72(f) (part).)

Sec. 92.102. EFFECT OF REPOSSESSION DURING REINSTATEMENT PERIOD. A consumer's right to reinstate a rental-purchase agreement is not affected by the merchant's repossession of the merchandise during the reinstatement period. (Bus. & Com. Code, Sec. 35.72(f) (part).)

Sec. 92.103. EFFECT ON REINSTATEMENT PERIOD OF MERCHANDISE RETURN. If merchandise is returned during the applicable reinstatement period, other than through judicial process, the right to reinstate the rental-purchase agreement is extended for a period of not less than 30 days after the date of return. (Bus. & Com. Code, Sec. 35.72(f) (part).)

Sec. 92.104. MERCHANT'S DUTIES ON REINSTATEMENT. (a) On reinstatement, the merchant shall provide the consumer with:

(1) the same merchandise; or

(2) substitute merchandise of comparable quality and condition.

(b) A merchant who provides the consumer with substitute merchandise shall also provide the consumer with the disclosures required by Section 92.052(a). (Bus. & Com. Code, Sec. 35.72(f) (part).)

[Sections 92.105-92.150 reserved for expansion]

SUBCHAPTER D. LOSS DAMAGE WAIVERS

Sec. 92.151. CONTRACT FOR WAIVER. In addition to other charges permitted by this chapter, a consumer may contract for a loss damage waiver. (Bus. & Com. Code, Sec. 35.721(a) (part).)

Sec. 92.152. CHARGE FOR WAIVER. A merchant may charge a periodic fee for a loss damage waiver in an amount not to exceed 10 percent of the periodic rental payment. (Bus. & Com. Code, Sec. 35.721(e).)

Sec. 92.153. RESTRICTIONS ON MERCHANT CONCERNING WAIVER. A merchant may not:

(1) sell a loss damage waiver unless:

(A) the department has approved the form of the contract containing the waiver; and

(B) the consumer agrees to the waiver in writing; or

(2) impose or require the purchase of a loss damage waiver as a mandatory charge. (Bus. & Com. Code, Secs. 35.721(b), (g).)

Sec. 92.154. REQUIRED NOTICE IN WAIVER. A contract that offers a loss damage waiver must include the following notice:

"This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the merchandise. You do not have to purchase this coverage. Before deciding whether or not to purchase this loss damage waiver, you may consider whether your homeowners' or casualty insurance policy affords you coverage for loss of or damage to rental merchandise and the amount of the deductible you would pay under your policy."

(Bus. & Com. Code, Sec. 35.721(f).)

Sec. 92.155. STATEMENT OF TOTAL CHARGE. A loss damage waiver agreement must include a statement of the total charge for the loss damage waiver. (Bus. & Com. Code, Sec. 35.721(d).)

Sec. 92.156. AUTHORIZED EXCLUSIONS. A loss damage waiver may exclude:

(1) loss or damage to the merchandise that is caused by an unexplained disappearance or abandonment of the merchandise;

(2) damage that is intentionally caused by the consumer; or

(3) damage that results from the consumer's wilful or wanton misconduct. (Bus. & Com. Code, Sec. 35.721(c).)

Sec. 92.157. RELATIONSHIP TO INSURANCE. A loss damage waiver is not insurance. (Bus. & Com. Code, Sec. 35.721(a) (part).)

Sec. 92.158. RULES FOR REVIEW OF CERTAIN CONTRACTS. The commission by rule shall provide the method for annually submitting to the department for review any contract, including any amendment to a contract, that contains a loss damage waiver. (Bus. & Com. Code, Sec. 35.721(h) (part).)

Sec. 92.159. FEES. The commission by rule shall set a reasonable fee to be paid by a merchant for:

(1) the review of a contract form under Section 92.158; and

(2) the administration of this chapter by the department. (Bus. & Com. Code, Sec. 35.721(h) (part).)

Sec. 92.160. ADMINISTRATIVE ENFORCEMENT OF SUBCHAPTER. (a) The department shall enforce this subchapter and, as necessary, may investigate a merchant who has one or more contracts that include a loss damage waiver.

(b) A person may file a complaint with the department alleging a violation of this subchapter. The department shall investigate the alleged violation on receipt of the complaint and may inspect any record relevant to the complaint.

(c) If, as a result of an investigation, the department determines that a violation may have occurred, the commission shall provide an opportunity for a hearing in the manner provided for a contested case under Chapter 2001, Government Code.

(d) If, after opportunity for hearing, the commission determines that the merchant has violated this subchapter, the commission may:

(1) impose an administrative penalty under Chapter 51, Occupations Code; or

(2) award the complainant damages in an amount not to exceed the amount of the contract price for the merchandise. (Bus. & Com. Code, Secs. 35.722(b), (c), (d), (e).)

[Sections 92.161-92.200 reserved for expansion]

SUBCHAPTER E. CIVIL ENFORCEMENT

Sec. 92.201. ACTION FOR VIOLATION OF CHAPTER. (a) A consumer damaged by a merchant's violation of this chapter is entitled to recover from the merchant:

(1) actual damages;

(2) an amount equal to 25 percent of the total amount of payments required to obtain ownership of the merchandise, except that the amount recovered under this subdivision may not be less than $250 or more than $1,000; and

(3) reasonable attorney's fees and court costs.

(b) A merchant is not liable under this section for a violation of this chapter caused by the merchant's error if, subject to Subsection (c), the merchant:

(1) provides the consumer written notice of the error; and

(2) makes adjustments in the consumer's account as necessary to ensure:

(A) the consumer will not be required to pay an amount in excess of the amount disclosed; and

(B) the agreement otherwise complies with this chapter.

(c) A merchant must take action under Subsection (b) before:

(1) the 31st day after the date the merchant discovers the error; and

(2) the merchant receives written notice of the error from the consumer or an action under this section is filed. (Bus. & Com. Code, Secs. 35.74(a), (b).)

Sec. 92.202. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17. (Bus. & Com. Code, Sec. 35.74(c).)

[Chapters 93-100 reserved for expansion]

SUBTITLE C. BUSINESS OPERATIONS

CHAPTER 101. INTERNATIONAL MATCHMAKING ORGANIZATIONS

Sec. 101.001. DEFINITIONS
Sec. 101.002. PROVIDING CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION
Sec. 101.003. PROVIDING ADDITIONAL CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION
Sec. 101.004. OBTAINING CRIMINAL HISTORY RECORD INFORMATION AND MARITAL HISTORY INFORMATION
Sec. 101.005. CIVIL PENALTY

CHAPTER 101. INTERNATIONAL MATCHMAKING ORGANIZATIONS

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Basic rights information" means information applicable to a noncitizen, including information about human rights, immigration, and emergency assistance and resources.

(2) "Client" means a person who is a resident of the United States and who contracts with an international matchmaking organization to meet recruits.

(3) "Criminal history record information" means criminal history record information obtained from the Department of Public Safety under Subchapter F, Chapter 411, Government Code, and

from the Federal Bureau of Investigation under Section 411.087, Government Code.

(4) "International matchmaking organization" means a corporation, partnership, sole proprietorship, or other legal entity that does business in the United States and offers to residents of this state dating, matrimonial, or social referral services involving recruits by:

(A) exchanging names, telephone numbers, addresses, or statistics;

(B) selecting photographs; or

(C) providing a social environment for introducing clients to recruits in a country other than the United States.

(5) "Marital history information" means a declaration of a person's current marital status, the number of times the person has been married, and whether any marriage occurred as a result of receiving services from an international matchmaking organization.

(6) "Recruit" means a person who:

(A) is not a citizen or resident of the United States; and

(B) is recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services. (Bus. & Com. Code, Sec. 35.121.)

Sec. 101.002. PROVIDING CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An international matchmaking organization shall provide each recruit with the criminal history record information and marital history information of the

organization's clients and with basic rights information.

(b) The information under Subsection (a) must:

(1) be in the recruit's native language; and

(2) be displayed in a manner that:

(A) separates the criminal history record information, the marital history information, and the basic rights information from any other information; and

(B) is highly noticeable. (Bus. & Com. Code, Sec. 35.122.)

Sec. 101.003. PROVIDING ADDITIONAL CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An international matchmaking organization shall disseminate to a recruit the criminal history record information and marital history information of a client and the basic rights information not later than the 30th day after the date the organization receives the criminal history record information and the marital history information from the client.

(b) The international matchmaking organization shall provide the information to the recruit in the recruit's native language. The organization shall pay the costs incurred to translate the information. (Bus. & Com. Code, Sec. 35.123.)

Sec. 101.004. OBTAINING CRIMINAL HISTORY RECORD INFORMATION AND MARITAL HISTORY INFORMATION. (a) A client shall:

(1) obtain a copy of the client's own criminal history record information;

(2) provide the criminal history record information to the international matchmaking organization; and

(3) provide the client's own marital history information to the international matchmaking organization.

(b) The international matchmaking organization shall require the client to affirm that the marital history information is complete and accurate and includes information regarding marriages, annulments, and dissolutions that occurred in another state or a foreign country.

(c) The international matchmaking organization may not provide any further services to the client or the recruit until the organization has:

(1) obtained the requested criminal history record information and marital history information; and

(2) provided the information to the recruit. (Bus. & Com. Code, Sec. 35.124.)

Sec. 101.005. CIVIL PENALTY. (a) An international matchmaking organization that violates this chapter is subject to a civil penalty not to exceed $20,000 for each violation.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) any previous violations of this chapter by the international matchmaking organization;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the international matchmaking organization; and

(4) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or

county attorney may bring an action under this section in the name of the state in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation occurs.

(d) A penalty collected under this section by the attorney general or a district or county attorney shall be deposited in the state treasury to the credit of the compensation to victims of crime fund under Article 56.54, Code of Criminal Procedure. (Bus. & Com. Code, Sec. 35.125.)

CHAPTER 102. SEXUALLY ORIENTED BUSINESSES

Sec. 102.001. DEFINITIONS
Sec. 102.002. PROHIBITION ON CERTAIN ACTIVITIES BY SEX OFFENDER IN RELATION TO BUSINESS
Sec. 102.003. PROHIBITION ON CERTAIN ACTIVITIES BY BUSINESS IN RELATION TO SEX OFFENDER
Sec. 102.004. INJUNCTION OR OTHER RELIEF
Sec. 102.005. CRIMINAL PENALTIES

CHAPTER 102. SEXUALLY ORIENTED BUSINESSES

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Sex offender" means a person who has been convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under Chapter 62, Code of Criminal Procedure.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code. (Bus. & Com. Code, Sec. 47.001.)

Sec. 102.002. PROHIBITION ON CERTAIN ACTIVITIES BY SEX

OFFENDER IN RELATION TO BUSINESS. A sex offender may not:

(1) wholly or partly own a sexually oriented business; or

(2) serve as a director, officer, operator, manager, or employee of a sexually oriented business. (Bus. & Com. Code, Sec. 47.002(a).)

Sec. 102.003. PROHIBITION ON CERTAIN ACTIVITIES BY BUSINESS IN RELATION TO SEX OFFENDER. If a sexually oriented business knows that a person is a sex offender, the business may not:

(1) contract with that person to operate or manage the business as an independent contractor; or

(2) employ that person as an officer, operator, manager, or other employee. (Bus. & Com. Code, Sec. 47.002(b).)

Sec. 102.004. INJUNCTION OR OTHER RELIEF. (a) The attorney general or appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a person who violates or threatens to violate Section 102.002 or 102.003.

(b) The action may be brought in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation or threatened violation occurs.

(c) The court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction. (Bus. & Com. Code, Sec. 47.003.)

Sec. 102.005. CRIMINAL PENALTIES. (a) A sex offender

commits an offense if the sex offender violates Section 102.002.

(b) A sexually oriented business commits an offense if the business violates Section 102.003.

(c) An offense under this section is a Class A misdemeanor. (Bus. & Com. Code, Sec. 47.004.)

CHAPTER 103. APPRAISALS IMPROPERLY INDUCED BY MORTGAGE LENDERS

Sec. 103.001. DEFINITIONS

Sec. 103.002. CRIMINAL PENALTY

CHAPTER 103. APPRAISALS IMPROPERLY INDUCED BY MORTGAGE LENDERS

Sec. 103.001. DEFINITIONS. In this chapter:

(1) "Lender" means a person who lends money for or invests money in mortgage loans.

(2) "Mortgage loan" means a loan secured by a deed of trust, security deed, or other lien on real property. (Bus. & Com. Code, Sec. 35.56(a).)

Sec. 103.002. CRIMINAL PENALTY. (a) A lender commits an offense if in connection with a mortgage loan transaction the lender pays or offers to pay a person, including an individual licensed or certified by the Texas Appraiser Licensing and Certification Board or the Texas Real Estate Commission, a fee or other consideration for appraisal services and the payment:

(1) is contingent on a minimum, maximum, or pre-agreed estimate of value of property securing the loan; and

(2) interferes with the person's ability or obligation to provide an independent and impartial opinion of the property's value.

(b) An offense under this section is a Class A misdemeanor.

(c) An instruction a lender gives to a real estate appraiser regarding a legal or other regulatory requirement for the appraisal of property, or any other communication between a lender or real estate appraiser necessary or appropriate under a law, regulation, or underwriting standard applicable to a real estate appraisal, does not constitute interference by a lender for purposes of Subsection (a)(2). (Bus. & Com. Code, Secs. 35.56(b), (c), (d).)

CHAPTER 104. RESTRICTIONS ON CHARGES BY MOTOR FUEL FRANCHISORS

Sec. 104.001. DEFINITIONS

Sec. 104.002. PROHIBITED FEES, CHARGES, AND DISCOUNTS

Sec. 104.003. CIVIL ACTION

CHAPTER 104. RESTRICTIONS ON CHARGES BY MOTOR FUEL FRANCHISORS

Sec. 104.001. DEFINITIONS. In this chapter:

(1) "Franchise":

(A) includes:

(i) a contract under which a distributor or retailer is authorized to occupy marketing premises in connection with the sale, consignment, or distribution of motor fuel under a trademark owned or controlled by a franchisor-refiner or by a refiner who supplies motor fuel to a distributor who authorizes the occupancy;

(ii) a contract relating to the supply of motor fuel to be sold, consigned, or distributed under a trademark owned or controlled by a refiner; and

(iii) the unexpired portion of any franchise transferred or assigned under the franchise provisions or any applicable provision of state or federal law authorizing the

transfer or assignment regardless of the franchise provisions; and

(B) does not include a contract:

(i) that is made in the distribution of motor fuels through a card-lock or key-operated pumping system; and

(ii) to which a refiner or producer of the motor fuel is not a party.

(2) "Franchisee" means a distributor or retailer who is authorized under a franchise to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(3) "Franchisor" means a refiner or distributor who authorizes under a franchise the use of a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) "Motor fuel" includes diesel fuel and gasoline:

(A) delivered to a service station by a franchisor; and

(B) usable as a propellant of a motor vehicle. (V.A.C.S. Art. 8612, Secs. 1(1), (2), (3), (5).)

Sec. 104.002. PROHIBITED FEES, CHARGES, AND DISCOUNTS. (a) For purposes of this section, wholesale price is computed by adding to the invoice price or purchase price per gallon charged to a franchisee who buys motor fuel any excise tax paid by the buyer and any reasonable freight charges paid by the buyer, and subtracting that portion of any refund, rebate, or subsidy not designed to offset the fee, charge, or discount described by this section.

(b) Except as provided by Subsection (c), a franchisor may not require a franchisee to pay to the franchisor a fee, charge, or discount for:

(1) honoring a credit card issued by the franchisor; or

(2) submitting to the franchisor, for payment or credit to the franchisee's account, documents or other evidence of indebtedness of the holder of a credit card issued by the franchisor.

(c) A franchisor may require a franchisee to pay the fee, charge, or discount if the franchisor, in consideration of competitive prices in the relevant market, has adjusted the wholesale prices charged or rebates credited to franchisees for motor fuel by amounts that on average for franchisees in this state substantially offset the fee, charge, or discount. (V.A.C.S. Art. 8612, Secs. 1(4), 2.)

Sec. 104.003. CIVIL ACTION. (a) A franchisee may bring a civil action against a franchisor who violates Section 104.002, without regard to the amount in controversy, in the district court in any county in which the franchisor or franchisee transacts business. An action under this section must be commenced and prosecuted not later than the second anniversary of the date the cause of action accrues against the franchisor.

(b) The court shall award to a franchisee who prevails in an action under this section:

(1) the amount of actual damages;

(2) equitable relief as determined by the court to be necessary to remedy the effects of the franchisor's violation of Section 104.002, including a declaratory judgment, permanent injunctive relief, and temporary injunctive relief; and

(3) court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(c) In addition to the remedies provided under Subsection (b), on finding that the defendant wilfully and knowingly committed the violation, the trier of fact shall award not more than three times the amount of actual damages.

(d) In an action under this section, the franchisor has the burden of establishing the offset described by Section 104.002 as an affirmative defense. (V.A.C.S. Art. 8612, Sec. 3.)

CHAPTER 105. REFUELING SERVICES FOR PERSONS WITH DISABILITIES

Sec. 105.001. DEFINITIONS
Sec. 105.002. APPLICABILITY OF CHAPTER
Sec. 105.003. REFUELING SERVICES
Sec. 105.004. NOTICE
Sec. 105.005. OFFENSE; PENALTY
Sec. 105.006. ENFORCEMENT

CHAPTER 105. REFUELING SERVICES FOR PERSONS WITH DISABILITIES

Sec. 105.001. DEFINITIONS. (a) In this chapter:

(1) "Refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

(2) "Service station" means a gasoline service station or other facility that offers gasoline or other motor vehicle fuel for sale to the public from the facility.

(b) In this chapter, with respect to the operation of a service station, "person" means an individual, firm, partnership, association, trustee, or corporation. (V.A.C.S. Art. 8613, Sec. 1; New.)

Sec. 105.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a service station that ordinarily provides pump island service, except that such a service station is not required to provide refueling service under this chapter during any regularly scheduled hours during which, for security reasons, the service station does not provide pump island service.

(b) This chapter does not apply to:

(1) a service station or other facility that:

(A) never provides pump island service; and

(B) has only remotely controlled pumps; or

(2) a refueling service used to provide liquefied gas, as defined by Section 162.001, Tax Code. (V.A.C.S. Art. 8613, Sec. 3.)

Sec. 105.003. REFUELING SERVICES. (a) A person who operates a service station shall provide, on request, refueling service to a person with a disability who is the driver of a vehicle and displays:

(1) a license plate issued under Section 504.201 or 504.203, Transportation Code; or

(2) a disabled parking placard issued under Section 681.004, Transportation Code.

(b) The price charged for motor vehicle fuel provided under Subsection (a) may not exceed the price the service station would otherwise generally charge the public for the purchase of motor vehicle fuel without refueling service. (V.A.C.S. Art. 8613, Sec. 2.)

Sec. 105.004. NOTICE. (a) The Department of Agriculture

shall provide a notice that states the provisions of this chapter to each person who operates a service station.

(b) The Texas Department of Transportation shall provide a notice that states the provisions of this chapter to each person with a disability who is issued:

(1) license plates under Section 504.201, Transportation Code; or

(2) a disabled parking placard under Section 681.004, Transportation Code. (V.A.C.S. Art. 8613, Sec. 4.)

Sec. 105.005. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 105.003 and the person is:

(1) a manager responsible for setting the service policy of a service station subject to this chapter; or

(2) an employee acting independently against the established service policy of the service station.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 8613, Sec. 5.)

Sec. 105.006. ENFORCEMENT. In addition to enforcement by the prosecuting attorney who represents the state, this chapter may be enforced by the attorney general. (V.A.C.S. Art. 8613, Sec. 6.)

TITLE 6. SALE OR TRANSFER OF GOODS

CHAPTER 201. SALE OF ITEMS AT FLEA MARKETS

Sec. 201.001. DEFINITION

Sec. 201.002. INAPPLICABILITY OF CHAPTER TO CERTAIN ITEMS

Sec. 201.003. SALE OF CERTAIN ITEMS PROHIBITED

Sec. 201.004. FRAUDULENT AUTHORIZATION FOR SALE OF CERTAIN ITEMS AT RETAIL
Sec. 201.005. PROVISION OF BOOTH OR SIMILAR SPACE NOT AN OFFENSE
Sec. 201.006. INVESTIGATION RECORDS REQUIRED

CHAPTER 201. SALE OF ITEMS AT FLEA MARKETS

Sec. 201.001. DEFINITION. In this chapter, "flea market" means a location at which booths or similar spaces are rented or otherwise made temporarily available to two or more persons and at which the persons offer tangible personal property for sale. (Bus. & Com. Code, Sec. 35.55(a).)

Sec. 201.002. INAPPLICABILITY OF CHAPTER TO CERTAIN ITEMS. This chapter does not apply to the sale or offer for sale of a nutritional supplement or vitamin. (Bus. & Com. Code, Sec. 35.55(h).)

Sec. 201.003. SALE OF CERTAIN ITEMS PROHIBITED. (a) A person commits an offense if the person sells or offers for sale at a flea market:

(1) infant formula or baby food of a type usually consumed by children younger than two years of age;

(2) a drug, as defined by Section 431.002, Health and Safety Code; or

(3) contact lenses, including disposable contact lenses.

(b) It is a defense to prosecution under this section that the person selling the item:

(1) is authorized in writing to sell the item at retail

by the manufacturer of the item or the manufacturer's authorized distributor and the authorization states the person's name; and

(2) provides the authorization for examination by any person at the flea market who requests to see the authorization.

(c) It is a defense to prosecution under this section that only a sample of the item or a catalog or brochure displaying the item was available at the flea market and the item sold was not delivered to the buyer at the flea market.

(d) An offense under this section is a misdemeanor punishable by a fine not to exceed $100.

(e) The penalty provided by this section is in addition to any other sanction provided by law. (Bus. & Com. Code, Secs. 35.55(b), (d), (f).)

Sec. 201.004. FRAUDULENT AUTHORIZATION FOR SALE OF CERTAIN ITEMS AT RETAIL. (a) A person commits an offense if the person provides to another person an authorization under Section 201.003(b) and:

(1) the authorization is forged or contains a false statement; or

(2) the person displaying the authorization obtained the authorization by fraud.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $100. (Bus. & Com. Code, Secs. 35.55(e), (f).)

Sec. 201.005. PROVISION OF BOOTH OR SIMILAR SPACE NOT AN OFFENSE. A person does not commit an offense under this chapter solely because the person provides booths or similar spaces at a

flea market. (Bus. & Com. Code, Sec. 35.55(c).)

Sec. 201.006. INVESTIGATION RECORDS REQUIRED. A law enforcement agency investigating a violation of this chapter shall maintain a record of the investigation. The record is public information. (Bus. & Com. Code, Sec. 35.55(g).)

CHAPTER 202. SALES OF MOTOR VEHICLES WITH STOPLAMP COVERINGS

Sec. 202.001. SALE OF MOTOR VEHICLE WITH CERTAIN STOPLAMP COVERING PROHIBITED

CHAPTER 202. SALES OF MOTOR VEHICLES WITH STOPLAMP COVERINGS

Sec. 202.001. SALE OF MOTOR VEHICLE WITH CERTAIN STOPLAMP COVERING PROHIBITED. (a) In this section, "motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person in the business of selling motor vehicles may not sell a motor vehicle with a transparent or semitransparent covering:

(1) placed over a stoplamp that is mounted on the rear center line of the vehicle either in or on the rear window or within six inches from the rear window of the vehicle for the purpose of emitting light when the vehicle's brakes are applied; and

(2) on which is impressed or imprinted a name, trade name, logotype, or other message that a person behind the vehicle can read when the stoplamp is illuminated.

(c) A person who violates this section commits an offense. An offense under this section is a Class C misdemeanor. (Bus. & Com. Code, Sec. 35.46.)

CHAPTER 203. EXPORTING ARTICLES WITHOUT INSPECTION

Sec. 203.001. CRIMINAL PENALTY FOR EXPORTING ARTICLES WITHOUT REQUIRED INSPECTION

CHAPTER 203. EXPORTING ARTICLES WITHOUT INSPECTION

Sec. 203.001. CRIMINAL PENALTY FOR EXPORTING ARTICLES WITHOUT REQUIRED INSPECTION. (a) A person commits an offense if the person:

(1) exports from this state, or ships for the purpose of exportation to a state other than this state or to a foreign port, an article of commerce that by law of this state is required to be inspected by a public inspector; and

(2) does not have the article inspected as required by law.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $100. (Bus. & Com. Code, Sec. 35.57.)

TITLE 7. RECEIPTS, DOCUMENTS OF TITLE, AND OTHER INSTRUMENTS

CHAPTER 251. WAREHOUSE RECEIPTS

Sec. 251.001. DEFINITIONS
Sec. 251.002. WAREHOUSEMAN ISSUING FRAUDULENT WAREHOUSE RECEIPT
Sec. 251.003. WAREHOUSEMAN FAILING TO STATE WAREHOUSEMAN'S OWNERSHIP OF GOODS ON RECEIPT
Sec. 251.004. WAREHOUSEMAN ISSUING WAREHOUSE RECEIPT WITHOUT CONTROL OF GOODS

Sec. 251.005. WAREHOUSEMAN ISSUING DUPLICATE OR ADDITIONAL WAREHOUSE RECEIPT
Sec. 251.006. WAREHOUSEMAN WRONGFULLY DELIVERING GOODS
Sec. 251.007. FAILURE TO DISCLOSE LACK OF OWNERSHIP OF GOODS
Sec. 251.008. FAILURE TO DISCLOSE EXISTENCE OF LIEN ON GOODS

CHAPTER 251. WAREHOUSE RECEIPTS

Sec. 251.001. DEFINITIONS. In this chapter:

(1) "Goods" means all things treated as movable for purposes of a contract of storage or transportation.

(2) "Issue" includes aiding in the issuance of a warehouse receipt.

(3) "Warehouse receipt" means a receipt issued by a warehouseman.

(4) "Warehouseman" means a person engaged in the business of storing goods for hire. The term includes an officer, agent, or employee of a warehouseman. (Bus. & Com. Code, Sec. 35.27; New.)

Sec. 251.002. WAREHOUSEMAN ISSUING FRAUDULENT WAREHOUSE RECEIPT. (a) A warehouseman may not, with intent to defraud, issue a warehouse receipt that contains a false statement.

(b) A warehouseman who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement. (Bus. & Com. Code, Sec. 35.28.)

Sec. 251.003. WAREHOUSEMAN FAILING TO STATE WAREHOUSEMAN'S OWNERSHIP OF GOODS ON RECEIPT. (a) A warehouseman may not knowingly issue a negotiable warehouse receipt describing goods the warehouseman owns, whether solely, jointly, or in common, and is storing, unless the warehouseman states the warehouseman's ownership of the goods on the receipt.

(b) A warehouseman who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year; or

(2) a fine not to exceed $1,000. (Bus. & Com. Code, Sec. 35.29.)

Sec. 251.004. WAREHOUSEMAN ISSUING WAREHOUSE RECEIPT WITHOUT CONTROL OF GOODS. (a) A warehouseman may not issue a warehouse receipt for goods if the warehouseman knows at the time of issuance that the goods described in the receipt are not under the warehouseman's control.

(b) A warehouseman who violates this section commits an offense. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not more than five years;

(2) a fine not to exceed $5,000; or

(3) both the fine and imprisonment. (Bus. & Com. Code,

Sec. 35.30.)

Sec. 251.005. WAREHOUSEMAN ISSUING DUPLICATE OR ADDITIONAL WAREHOUSE RECEIPT. (a) A warehouseman may not issue a duplicate or additional negotiable warehouse receipt for goods if the warehouseman knows at the time of issuance that a previously issued negotiable warehouse receipt describing the goods is outstanding and uncanceled.

(b) This section does not apply if:

(1) the word "duplicate" is plainly placed on the duplicate or additional negotiable warehouse receipt; or

(2) goods described in the outstanding and uncanceled negotiable warehouse receipt were delivered under a court order on proof that the receipt was lost or destroyed.

(c) A warehouseman who violates this section commits an offense. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not more than five years;

(2) a fine not to exceed $5,000; or

(3) both the fine and imprisonment. (Bus. & Com. Code, Sec. 35.31.)

Sec. 251.006. WAREHOUSEMAN WRONGFULLY DELIVERING GOODS. (a) A warehouseman may not knowingly deliver goods that are described in a negotiable warehouse receipt and stored with the warehouseman, unless the receipt is surrendered to the warehouseman at or before the time the warehouseman delivers the goods.

(b) This section does not apply if the goods are:

(1) delivered under a court order on proof that the

negotiable warehouse receipt describing the goods was lost or destroyed;

(2) lawfully sold to satisfy a warehouseman's lien; or

(3) disposed of because of the perishable or hazardous nature of the goods.

(c) A warehouseman who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement. (Bus. & Com. Code, Sec. 35.32.)

Sec. 251.007. FAILURE TO DISCLOSE LACK OF OWNERSHIP OF GOODS. (a) A person who obtains a negotiable warehouse receipt describing goods the person does not own may not, with intent to defraud, negotiate the receipt for value without disclosing the person's lack of ownership.

(b) A person who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement. (Bus. & Com. Code, Sec. 35.33 (part).)

Sec. 251.008. FAILURE TO DISCLOSE EXISTENCE OF LIEN ON GOODS. (a) A person who obtains a negotiable warehouse receipt

describing goods subject to a lien may not, with intent to defraud, negotiate the receipt for value without disclosing the lien's existence.

(b) A person who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement. (Bus. & Com. Code, Sec. 35.33 (part).)

CHAPTER 252. BILLS OF LADING

Sec. 252.001. DEFINITIONS
Sec. 252.002. DUTIES OF RAILROAD COMMISSION
Sec. 252.003. AGENT WRONGFULLY FAILING OR REFUSING TO ISSUE BILL OF LADING
Sec. 252.004. AGENT ISSUING FRAUDULENT BILL OF LADING
Sec. 252.005. AGENT ISSUING ORDER BILL OF LADING IN DUPLICATE OR SET OF PARTS
Sec. 252.006. FRAUDULENTLY INDUCING ISSUANCE OF BILL OF LADING
Sec. 252.007. FRAUDULENTLY NEGOTIATING OR TRANSFERRING BILL OF LADING

CHAPTER 252. BILLS OF LADING

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Agent" includes an officer, employee, or receiver.

(2) "Bill of lading" means a document evidencing the

receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods. The term includes an air consignment note, air waybill, or other document for air transportation comparable to a bill of lading for marine or rail transportation.

(3) "Goods" means all things treated as movable for purposes of a contract of storage or transportation. (Bus. & Com. Code, Sec. 35.14 (part).)

Sec. 252.002. DUTIES OF RAILROAD COMMISSION. (a) In this section, "common carrier" does not include a pipeline company or express company.

(b) The Railroad Commission of Texas shall:

(1) prescribe forms, terms, and conditions for authenticating, certifying, or validating bills of lading issued by a common carrier;

(2) regulate the manner by which a common carrier issues bills of lading; and

(3) take other action necessary to carry out the purposes of Chapter 7.

(c) After giving reasonable notice to interested common carriers and to the public, the railroad commission may amend a rule adopted under Subsection (b). (Bus. & Com. Code, Secs. 35.14 (part), 35.15.)

Sec. 252.003. AGENT WRONGFULLY FAILING OR REFUSING TO ISSUE BILL OF LADING. (a) In this section, "common carrier" does not include a pipeline company or express company.

(b) An agent of a common carrier may not after lawful demand

fail or refuse to issue a bill of lading in accordance with Chapter 7 or a rule of the railroad commission.

(c) An agent who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than six months;

(2) a fine not to exceed $200; or

(3) both the fine and confinement. (Bus. & Com. Code, Secs. 35.14 (part), 35.16.)

Sec. 252.004. AGENT ISSUING FRAUDULENT BILL OF LADING. (a) In this section, "common carrier" does not include a pipeline company or express company.

(b) An agent of a common carrier may not with intent to defraud a person:

(1) issue a bill of lading;

(2) incorrectly describe goods or the quantity of goods in a bill of lading; or

(3) issue a bill of lading without authority.

(c) An agent who violates this section commits an offense. An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years or less than two years. (Bus. & Com. Code, Secs. 35.14 (part), 35.17.)

Sec. 252.005. AGENT ISSUING ORDER BILL OF LADING IN DUPLICATE OR SET OF PARTS. (a) Except where customary in overseas transportation, an agent of a common carrier may not knowingly issue or aid in issuing an order bill of lading in duplicate or in a

set of parts.

(b) An agent who violates this section commits an offense. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not more than five years; and

(2) a fine not to exceed $5,000. (Bus. & Com. Code, Sec. 35.18.)

Sec. 252.006. FRAUDULENTLY INDUCING ISSUANCE OF BILL OF LADING. (a) A person may not, with intent to defraud, induce an agent of a common carrier to:

(1) issue to the person a bill of lading; or

(2) materially misrepresent in a bill of lading issued on behalf of the common carrier the quantity of goods described in the bill of lading.

(b) A person who violates this section commits an offense. An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than five years or less than two years. (Bus. & Com. Code, Sec. 35.20.)

Sec. 252.007. FRAUDULENTLY NEGOTIATING OR TRANSFERRING BILL OF LADING. (a) A person may not, with intent to defraud, negotiate or transfer a bill of lading that:

(1) is issued in violation of Chapter 7; or

(2) contains a false, material statement of fact.

(b) A person who violates this section commits an offense. An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term

of not more than 10 years. (Bus. & Com. Code, Sec. 35.21.)

CHAPTER 253. PROTESTED OUT-OF-STATE DRAFTS

Sec. 253.001. DAMAGES ON PROTESTED OUT-OF-STATE DRAFTS

CHAPTER 253. PROTESTED OUT-OF-STATE DRAFTS

Sec. 253.001. DAMAGES ON PROTESTED OUT-OF-STATE DRAFTS. The holder of a protested draft is entitled to damages in an amount equal to 10 percent of the amount of the draft, plus interest and the costs of suit, if:

(1) the draft was drawn by a merchant in this state on the merchant's agent or factor outside this state; and

(2) the drawer's or indorser's liability on the draft has been fixed. (Bus. & Com. Code, Sec. 35.39.)

CHAPTER 254. NOTE OR LIEN IDENTIFYING A PATENT RIGHT

Sec. 254.001. IDENTIFICATION OF PATENT RIGHT

Sec. 254.002. FAILURE TO IDENTIFY PATENT RIGHT; CRIMINAL PENALTY

CHAPTER 254. NOTE OR LIEN IDENTIFYING A PATENT RIGHT

Sec. 254.001. IDENTIFICATION OF PATENT RIGHT. (a) A note or lien evidencing or securing the purchase price for a patent right or patent right territory must contain on the face of the note or lien a statement that the note or lien was given for a patent right or patent right territory.

(b) The statement required by Subsection (a):

(1) is notice to a subsequent purchaser of the note or lien of all equities between the original parties to the note or lien; and

(2) subjects a subsequent holder of the note or lien to

all defenses available against the original parties to the note or lien. (Bus. & Com. Code, Secs. 35.40(a), (b).)

Sec. 254.002. FAILURE TO IDENTIFY PATENT RIGHT; CRIMINAL PENALTY. (a) A person selling a patent right or patent right territory may not take a note or lien evidencing or securing the purchase price for the patent right or patent right territory without placing on the face of the note or lien the statement required by Section 254.001(a).

(b) A person who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $25 or more than $200. (Bus. & Com. Code, Secs. 35.40(c), (d).)

TITLE 8. SECURITY INSTRUMENTS

CHAPTER 261. UTILITY SECURITY INSTRUMENTS

Sec. 261.001. DEFINITIONS

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CHAPTER 261. UTILITY SECURITY INSTRUMENTS

Sec. 261.001. DEFINITIONS. (a) In this chapter:

(1) "Utility" means a person engaged in this state in:

(A) generating, transmitting, or distributing and selling electric power;

(B) transporting, distributing, and selling, through a local distribution system, natural or other gas for domestic, commercial, industrial, or other use;

(C) owning or operating a pipeline to transmit or sell natural or other gas, natural gas liquids, crude oil, or petroleum products to another pipeline company or to a refinery, local distribution system, municipality, or industrial consumer;

(D) providing telephone or telegraph service to others;

(E) producing, transmitting, or distributing and selling steam or water;

(F) operating a railroad; or

(G) providing sewer service to others.

(2) "Utility security instrument" means:

(A) a mortgage, deed of trust, security agreement, or other instrument executed to secure payment of a bond, note, or other obligation of a utility; or

(B) an instrument that supplements or amends an instrument described by Paragraph (A), including a signed copy of the instrument.

(b) The definitions in Chapters 1 and 9 apply to this chapter. (Bus. & Com. Code, Sec. 35.01.)

Sec. 261.002. ACT CONSTITUTING FILING. For purposes of this chapter, a utility security instrument is filed when it is deposited for filing with the secretary of state. (New.)

Sec. 261.003. APPLICABILITY OF CHAPTER. A utility is subject to the requirements and entitled to the benefits of this chapter:

(1) only if the utility files with the secretary of state a utility security instrument that states conspicuously on its title page: "This Instrument Grants A Security Interest By A Utility"; and

(2) only with respect to collateral covered by a utility security instrument filed by the utility in accordance with Subdivision (1). (Bus. & Com. Code, Secs. 35.015(1), (2).)

Sec. 261.004. FILING UTILITY SECURITY INSTRUMENT WITH SECRETARY OF STATE: PERFECTION AND NOTICE. (a) Subject to Subsection (b), the filing with the secretary of state of a utility security instrument executed by a utility and described by Section 261.003(1) and payment of the filing fee prescribed by Section 261.008:

(1) constitute perfection of a security interest created by the instrument in any personal property:

(A) in which a security interest may be perfected

by filing under Chapter 9, including any goods that are or will become a fixture;

(B) that is located in this state; and

(C) that was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed; and

(2) if the instrument is proven, acknowledged, or certified as otherwise required by law for the recording of real property mortgages, serve as notice to all persons of the existence of the instrument and the security interest granted by the instrument in any real property, or in any fixture on or to be placed on the property, that:

(A) is located in this state; and

(B) was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed.

(b) For perfection or notice under Subsection (a) to be effective as to a particular item of property, the filed utility security instrument must:

(1) identify the property by type, character, or description if the property is presently owned personal property, including a fixture, and for that purpose any description of personal property or real property is sufficient, regardless of whether specific, if it reasonably identifies what is described;

(2) provide a description of the property if the property is presently owned real property; or

(3) if the property is to be acquired after the

instrument is executed, state conspicuously on its title page: "This Instrument Contains After-Acquired Property Provisions."

(c) A filing under this section satisfies any requirement of:

(1) a filing of the utility security instrument or a financing statement in the office of a county clerk if that filing would otherwise be necessary to perfect a security interest; and

(2) a recording of the utility security instrument in the office of a county clerk if that recording would otherwise make the instrument effective as to all creditors and subsequent purchasers for valuable consideration without notice. (Bus. & Com. Code, Secs. 35.02(a), (b), (c).)

Sec. 261.005. DURATION OF PERFECTION AND NOTICE. The perfection and notice provided by the filing of a utility security instrument under Section 261.004 take effect on the date of filing and remain in effect without any renewal, refiling, or continuation statement until the interest granted as security is released by the filing of a termination statement, or a release of all or a part of the property, signed by the secured party. (Bus. & Com. Code, Sec. 35.03.)

Sec. 261.006. PRIORITIES AND REMEDIES APPLICABLE TO CERTAIN PERFECTED SECURITY INTERESTS. The provisions of Chapter 9 relating to priorities and remedies apply to security interests in personal property, including fixtures, perfected under Section 261.004. (Bus. & Com. Code, Sec. 35.02(d).)

Sec. 261.007. NOTICE OF NAME CHANGE, MERGER, OR CONSOLIDATION. (a) A utility that changes its name or merges or

consolidates after filing a utility security instrument under Section 261.004 shall promptly file with the secretary of state a written statement of the name change, merger, or consolidation. The written statement must:

(1) be signed by the secured party and the utility;

(2) identify the appropriate utility security instrument by file number; and

(3) state the name of the utility after the name change, merger, or consolidation.

(b) Unless a written statement is filed under Subsection (a) not later than four months after the effective date of the name change, merger, or consolidations, the filing of a utility security instrument before the name change, merger, or consolidation does not constitute perfection or serve as notice under Section 261.004 of a security interest in property acquired by the utility more than four months after the name change, merger, or consolidation. (Bus. & Com. Code, Sec. 35.04.)

Sec. 261.008. ENDORSEMENT AND FILING BY SECRETARY OF STATE; FEES. (a) The secretary of state shall endorse on a utility security instrument and any statement of name change, merger, or consolidation filed with the secretary of state:

(1) the day and hour of receipt; and

(2) the assigned file number.

(b) In the absence of other evidence, an endorsement under Subsection (a) is conclusive proof of the time and fact of filing.

(c) The secretary of state shall file in adequate filing devices and retain in the secretary of state's office all utility

security instruments and statements of name change, merger, or consolidation filed with the secretary of state.

(d) The secretary of state shall charge a $25 fee to:

(1) file and index:

(A) a utility security instrument;

(B) an instrument that supplements or amends a utility security instrument; or

(C) a statement of name change, merger, or consolidation; and

(2) stamp a copy of a document described by Subdivision (1), provided by the secured party or the utility, to indicate the date and place of filing. (Bus. & Com. Code, Sec. 35.05.)

Sec. 261.009. CERTIFICATE OF FILING; FEE. (a) On request of any person, the secretary of state shall issue a certificate that:

(1) indicates whether on the date and hour stated in the request, there is on file any presently effective utility security instrument naming a particular utility; and

(2) if there is, states:

(A) the date and hour the utility security instrument was filed; and

(B) the names and addresses of each secured party.

(b) The fee for a certificate under this section is:

(1) $10, if the request for the certificate is in the standard form prescribed by the secretary of state; or

(2) $25, if the request is not in the standard form. (Bus. & Com. Code, Sec. 35.06 (part).)

Sec. 261.010. COPY OF FILED UTILITY SECURITY INSTRUMENT; FEE. (a) On request and payment of the fee prescribed by Subsection (b), the secretary of state shall provide a person with a copy of any filed utility security instrument.

(b) The fee for a copy under this section is $1.50 per page, but may not be less than $5 or more than $100 for each request concerning a particular utility. (Bus. & Com. Code, Sec. 35.06 (part).)

Sec. 261.011. NOTICE OF UTILITY SECURITY INSTRUMENT AFFECTING REAL PROPERTY. (a) If a utility security instrument filed with the secretary of state under Section 261.004 grants a security interest in real property owned by the utility, a notice of utility security instrument affecting real property must be recorded in the office of the county clerk in the county in which the real property is located. The notice must state:

(1) the name of the utility that executed the utility security instrument;

(2) that a utility security instrument affecting real property in the county has been executed by the utility; and

(3) that the utility security instrument was filed, and other security instruments may be on file, with the secretary of state.

(b) A notice recorded under Subsection (a) is sufficient to provide notice of any other security instrument filed with the secretary of state that:

(1) was executed by the utility; and

(2) grants a security interest in any real property located in the county in which the notice was recorded or in any fixture on the property.

(c) The county clerk shall record and index a notice described by Subsection (a) in the same records and indices as the clerk records and indexes mortgages on real property.

(d) The county clerk shall maintain a separate index of utility security instruments and continuation statements recorded under prior law. (Bus. & Com. Code, Secs. 35.07(a), (b) (part), (c), (d).)

TITLE 9. APPLICABILITY OF LAW TO COMMERCIAL TRANSACTIONS

CHAPTER 271. RIGHTS OF PARTIES TO CHOOSE LAW APPLICABLE TO CERTAIN TRANSACTIONS

Sec. 271.001. DEFINITION

Sec. 271.002. SUBSTANTIALLY SIMILAR OR RELATED TRANSACTIONS

Sec. 271.003. CONFLICT-OF-LAWS RULES

Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF TRANSACTION TO PARTICULAR JURISDICTION

Sec. 271.005. LAW GOVERNING ISSUE RELATING TO QUALIFIED TRANSACTION

Sec. 271.006. LAW GOVERNING INTERPRETATION OR CONSTRUCTION OF AGREEMENT RELATING TO QUALIFIED TRANSACTION

Sec. 271.007. LAW GOVERNING VALIDITY OR ENFORCEABILITY OF TERM OF AGREEMENT RELATING TO QUALIFIED TRANSACTION
Sec. 271.008. APPLICABILITY TO CERTAIN REAL PROPERTY TRANSACTIONS; EXCEPTIONS
Sec. 271.009. EXCEPTION: MARRIAGE OR ADOPTION
Sec. 271.010. EXCEPTION: DECEDENT'S ESTATE
Sec. 271.011. EXCEPTION: OTHER STATUTE SPECIFYING GOVERNING LAW

CHAPTER 271. RIGHTS OF PARTIES TO CHOOSE LAW APPLICABLE TO CERTAIN TRANSACTIONS

Sec. 271.001. DEFINITION. In this chapter, "qualified transaction" means a transaction under which a party:

(1) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least $1 million; or

(2) lends, advances, borrows, or receives, or is obligated to lend or advance or is entitled to borrow or receive, money or credit with an aggregate value of at least $1 million. (Bus. & Com. Code, Sec. 35.51(a)(2).)

Sec. 271.002. SUBSTANTIALLY SIMILAR OR RELATED TRANSACTIONS. For purposes of this chapter, two or more substantially similar or related transactions are considered a single transaction if the transactions:

(1) are entered into contemporaneously; and

(2) have at least one common party. (Bus. & Com. Code, Sec. 35.51(a)(1).)

Sec. 271.003. CONFLICT-OF-LAWS RULES. For purposes of this chapter, a reference to the law of a particular jurisdiction does not include that jurisdiction's conflict-of-laws rules. (Bus. & Com. Code, Secs. 35.51(b) (part), (c) (part), (e) (part).)

Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF TRANSACTION TO PARTICULAR JURISDICTION. (a) For purposes of this chapter, a transaction bears a reasonable relation to a particular jurisdiction if the transaction, the subject matter of the transaction, or a party to the transaction is reasonably related to that jurisdiction.

(b) A transaction bears a reasonable relation to a particular jurisdiction if:

(1) a party to the transaction is a resident of that jurisdiction;

(2) a party to the transaction has the party's place of business or, if that party has more than one place of business, the party's chief executive office or an office from which the party conducts a substantial part of the negotiations relating to the transaction, in that jurisdiction;

(3) all or part of the subject matter of the transaction is located in that jurisdiction;

(4) a party to the transaction is required to perform in that jurisdiction a substantial part of the party's obligations relating to the transaction, such as delivering payments; or

(5) a substantial part of the negotiations relating to the transaction occurred in that jurisdiction and an agreement relating to the transaction was signed in that jurisdiction by a

party to the transaction. (Bus. & Com. Code, Sec. 35.51(d).)

Sec. 271.005. LAW GOVERNING ISSUE RELATING TO QUALIFIED TRANSACTION. (a) Except as provided by Section 271.007, 271.008(b), 271.009, 271.010, or 271.011 or by Chapter 272, the law of a particular jurisdiction governs an issue relating to a qualified transaction if:

(1) the parties to the transaction agree in writing that the law of that jurisdiction governs the issue, including the validity or enforceability of an agreement relating to the transaction or a provision of the agreement; and

(2) the transaction bears a reasonable relation to that jurisdiction.

(b) The law of a particular jurisdiction governs an issue described by this section regardless of whether the application of that law is contrary to a fundamental or public policy of this state or of any other jurisdiction. (Bus. & Com. Code, Sec. 35.51(b) (part).)

Sec. 271.006. LAW GOVERNING INTERPRETATION OR CONSTRUCTION OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. Except as provided by Section 271.008(b), 271.009, 271.010, or 271.011 and by Chapter 272, if the parties to a qualified transaction agree in writing that the law of a particular jurisdiction governs the interpretation or construction of an agreement relating to the transaction or a provision of the agreement, the law of that jurisdiction governs that issue regardless of whether the transaction bears a reasonable relation to that jurisdiction. (Bus. & Com. Code, Sec. 35.51(c) (part).)

Sec. 271.007. LAW GOVERNING VALIDITY OR ENFORCEABILITY OF TERM OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. (a) Except as provided by Section 271.008(b), 271.009, 271.010, or 271.011 or by Chapter 272, this section applies if:

(1) the parties to a qualified transaction agree in writing that the law of a particular jurisdiction governs the validity or enforceability of an agreement relating to the transaction or a provision of the agreement;

(2) the transaction bears a reasonable relation to that jurisdiction; and

(3) a term of the agreement or of that provision is invalid or unenforceable under the law of that jurisdiction but is valid or enforceable under the law of the jurisdiction that has the most significant relation to the transaction, the subject matter of the transaction, and the parties.

(b) If this section applies:

(1) the law of the jurisdiction that has the most significant relation to the transaction, the subject matter of the transaction, and the parties governs the validity or enforceability of a term described by Subsection (a)(3); and

(2) the law of the jurisdiction that the parties agree would govern the validity or enforceability of the agreement or provision governs the validity or enforceability of the other terms of the agreement or provision. (Bus. & Com. Code, Sec. 35.51(e) (part).)

Sec. 271.008. APPLICABILITY TO CERTAIN REAL PROPERTY TRANSACTIONS; EXCEPTIONS. (a) Sections 271.004-271.007 apply to

the determination of the law that governs an issue relating to a transaction involving real property other than a matter described by Subsection (b), including the validity or enforceability of an indebtedness incurred in consideration for the transfer of, or the payment of which is secured by a lien on, real property.

(b) Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) whether a transaction transfers or creates an interest in real property for security purposes or otherwise;

(2) the nature of an interest in real property that is transferred or created by a transaction;

(3) the method for foreclosure of a lien on real property;

(4) the nature of an interest in real property that results from foreclosure; or

(5) the manner and effect of recording or failing to record evidence of a transaction that transfers or creates an interest in real property. (Bus. & Com. Code, Secs. 35.51(f) (part), (g).)

Sec. 271.009. EXCEPTION: MARRIAGE OR ADOPTION. Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) the validity of a marriage or an adoption;

(2) whether a marriage has been terminated; or

(3) the effect of a marriage on property owned by a spouse at the time of the marriage or acquired by either spouse during the marriage. (Bus. & Com. Code, Sec. 35.51(f) (part).)

Sec. 271.010. EXCEPTION: DECEDENT'S ESTATE. Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) whether an instrument is a will;

(2) the rights of persons under a will; or

(3) the rights of persons in the absence of a will. (Bus. & Com. Code, Sec. 35.51(f) (part).)

Sec. 271.011. EXCEPTION: OTHER STATUTE SPECIFYING GOVERNING LAW. Sections 271.004-271.007 do not apply to the determination of the law that governs an issue that another statute of this state or a statute of the United States provides is governed by the law of a particular jurisdiction. (Bus. & Com. Code, Sec. 35.51(f) (part).)

CHAPTER 272. LAW APPLICABLE TO CERTAIN CONTRACTS FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS

Sec. 272.001. VOIDABLE CONTRACT PROVISION

Sec. 272.002. CONTRACT PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS

CHAPTER 272. LAW APPLICABLE TO CERTAIN CONTRACTS FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS

Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) This section applies only to a contract that is principally for the construction or repair of an improvement to real property located in this state.

(b) If a contract contains a provision making the contract or any conflict arising under the contract subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by the

party obligated by the contract to perform the construction or repair. (Bus. & Com. Code, Sec. 35.52(a).)

Sec. 272.002. CONTRACT PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS. (a) For purposes of this chapter, a contract is principally for the construction or repair of an improvement to real property located in this state if the contract obligates a party, as the party's principal obligation under the contract, to provide labor or labor and materials as a general contractor or subcontractor for the construction or repair of an improvement to real property located in this state.

(b) For purposes of this chapter, a contract is not principally for the construction or repair of an improvement to real property located in this state if the contract:

(1) is a partnership agreement or other agreement governing an entity or trust;

(2) provides for a loan or other extension of credit and the party promising to construct or repair the improvement is doing so as part of the party's agreements with the lender or other person who extends credit; or

(3) is for the management of real property or improvements and the obligation to construct or repair the improvement is part of that management.

(c) Subsections (a) and (b) do not provide an exclusive list of the situations in which a contract is or is not principally for the construction or repair of an improvement to real property located in this state. (Bus. & Com. Code, Secs. 35.52(b), (c), (d).)

CHAPTER 273. LAW OR FORUM APPLICABLE TO CERTAIN CONTRACTS FOR DISPOSITION OF GOODS

Sec. 273.001. CONTRACTS SUBJECT TO CHAPTER
Sec. 273.002. NOTICE OF APPLICABLE LAW OR FORUM
Sec. 273.003. FAILURE TO PROVIDE NOTICE

CHAPTER 273. LAW OR FORUM APPLICABLE TO CERTAIN CONTRACTS FOR DISPOSITION OF GOODS

Sec. 273.001. CONTRACTS SUBJECT TO CHAPTER. This chapter applies to a contract only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of $50,000 or less;

(2) any element of the contract's execution occurred in this state;

(3) a party to the contract is:

(A) an individual resident of this state; or

(B) an association or corporation that is created under the laws of this state or has its principal place of business in this state; and

(4) Section 1.301 does not apply to the contract. (Bus. & Com. Code, Sec. 35.53(a).)

Sec. 273.002. NOTICE OF APPLICABLE LAW OR FORUM. If a contract contains a provision making the contract or any conflict arising under the contract subject to another state's laws, litigation in the courts of another state, or arbitration in another state, that provision must be set out conspicuously in print, type, or other form of writing that is boldfaced,

capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice the provision. (Bus. & Com. Code, Sec. 35.53(b) (part).)

Sec. 273.003. FAILURE TO PROVIDE NOTICE. A contract provision that does not comply with Section 273.002 is voidable by a party against whom the provision is sought to be enforced. (Bus. & Com. Code, Sec. 35.53(b) (part).)

CHAPTER 274. LAW APPLICABLE TO CONTRACT MADE OVER INTERNET

Sec. 274.001. DEFINITION
Sec. 274.002. APPLICABILITY OF CHAPTER; EXCEPTION
Sec. 274.003. STATE LAW GOVERNING CONTRACT; BURDEN OF PROOF
Sec. 274.004. APPLICABILITY OF OTHER LAW TO CONTRACT

CHAPTER 274. LAW APPLICABLE TO CONTRACT MADE OVER INTERNET

Sec. 274.001. DEFINITION. In this chapter, "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet. (Bus. & Com. Code, Sec. 35.531(a).)

Sec. 274.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a) Except as provided by Subsection (b), this chapter applies only to a contract made solely over the Internet between a person located in this state and a person located outside this state who does not maintain an office or agent in this state for transacting business in this state.

(b) This chapter does not apply to a contract to which Chapter 271 applies. (Bus. & Com. Code, Secs. 35.531(b), (e) (part).)

Sec. 274.003. STATE LAW GOVERNING CONTRACT; BURDEN OF PROOF. (a) A contract is governed by the law of this state unless each party to the contract who is located in this state:

(1) is given notice that the law of the state in which another party to the contract is located applies to the contract; and

(2) agrees to the application of that state's law.

(b) A person asserting that the law of another state governs a contract has the burden of proving that notice was given and agreement was obtained as specified by Subsection (a). (Bus. & Com. Code, Secs. 35.531(c), (d).)

Sec. 274.004. APPLICABILITY OF OTHER LAW TO CONTRACT. Section 1.031 and Chapter 273 do not apply to a contract to which this chapter applies. (Bus. & Com. Code, Sec. 35.531(e) (part).)

TITLE 10. USE OF TELECOMMUNICATIONS

SUBTITLE A. TELEPHONES

CHAPTER 301. TELEPHONE SOLICITATION PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. DEFINITIONS

[Sections 301.002-301.050 reserved for expansion]

SUBCHAPTER B. PERMITTED AND PROHIBITED PRACTICES

Sec. 301.051. TELEPHONE SOLICITATION REQUIREMENTS

Sec. 301.052. CHARGES TO CONSUMER'S CREDIT CARD ACCOUNT

[Sections 301.053-301.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 301.101. INVESTIGATION BY ATTORNEY GENERAL'S OFFICE

Sec. 301.102. INJUNCTIVE RELIEF

Sec. 301.103. CIVIL PENALTY; RESTITUTION

Sec. 301.104. CIVIL ACTION

Sec. 301.105. VENUE

CHAPTER 301. TELEPHONE SOLICITATION PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. DEFINITIONS. In this chapter:

(1) "Automated dial announcing device" means automated equipment used for telephone solicitation or collection that can:

(A) store telephone numbers to be called or produce numbers to be called through use of a random or sequential number generator; and

(B) convey, alone or in conjunction with other equipment, a prerecorded or synthesized voice message to the number called without the use of a live operator.

(2) "Consumer" means a person who is solicited to purchase, lease, or receive a consumer good or service.

(3) "Consumer good or service" means:

(A) real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including:

(i) personal property intended to be attached to or installed in any real property;

(ii) a cemetery lot; and

(iii) a time-share estate; or

(B) a service related to real or personal property.

(4) "Consumer telephone call" means an unsolicited call made to a residential telephone number by a telephone solicitor to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(5) "Telephone solicitor" means a person who makes or causes to be made a consumer telephone call, including a call made by an automated dial announcing device. (Bus. & Com. Code, Sec. 37.01.)

[Sections 301.002-301.050 reserved for expansion]

SUBCHAPTER B. PERMITTED AND PROHIBITED PRACTICES

Sec. 301.051. TELEPHONE SOLICITATION REQUIREMENTS. (a) This section does not apply to a consumer telephone call made:

(1) in response to the express request of the consumer;

(2) primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call; or

(3) to a consumer with whom the telephone solicitor

has a prior or existing business relationship.

(b) A telephone solicitor may not make a consumer telephone call to a consumer unless:

(1) the telephone solicitor, immediately after making contact with the consumer to whom the call is made, identifies:

(A) himself or herself by name;

(B) the business on whose behalf the telephone solicitor is calling; and

(C) the purpose of the call;

(2) the telephone solicitor makes the call after 12 noon and before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m. on a weekday or a Saturday; and

(3) for those calls in which an automated dial announcing device is used, the device disconnects the consumer's telephone line within the period specified by Section 55.126, Utilities Code, after either the telephone solicitor or the consumer terminates the call. (Bus. & Com. Code, Sec. 37.02.)

Sec. 301.052. CHARGES TO CONSUMER'S CREDIT CARD ACCOUNT. A person who sells consumer goods or services through the use of a telephone solicitor may not make or submit a charge to a consumer's credit card account unless the seller:

(1) provides that:

(A) the consumer may receive a full refund for returning undamaged and unused goods or canceling services by providing notice to the seller not later than the seventh day after the date the consumer receives the goods or services; and

(B) the seller will process:

(i) a refund not later than the 30th day after the date the seller receives the returned goods from the consumer; or

(ii) a full refund not later than the 30th day after the date the consumer cancels an order for the purchase of services not performed or a pro rata refund for any services not yet performed for the consumer;

(2) provides to the consumer a written contract fully describing the goods or services being offered, the total price to be charged, the name, address, and business telephone number of the seller, and any terms affecting the sale and receives from the consumer a signed copy of the contract; or

(3) is an organization that qualifies for an exemption from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, and has obtained that exemption from the Internal Revenue Service. (Bus. & Com. Code, Sec. 37.03.)

[Sections 301.053-301.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 301.101. INVESTIGATION BY ATTORNEY GENERAL'S OFFICE. The attorney general's office shall investigate a complaint relating to a violation of this chapter. (Bus. & Com. Code, Sec. 37.04(a) (part).)

Sec. 301.102. INJUNCTIVE RELIEF. (a) The attorney general's office may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter.

(b) A district court, on petition of the attorney general's

office and on finding that a person is violating this chapter, may:

(1) issue an injunction prohibiting the person from continuing the violation; or

(2) grant any other injunctive relief warranted by the facts. (Bus. & Com. Code, Secs. 37.04(a) (part), (b).)

Sec. 301.103. CIVIL PENALTY; RESTITUTION. (a) A person who knowingly violates this chapter is liable for a civil penalty of not more than $10,000 for each violation.

(b) In addition to bringing an action for injunctive relief under Section 301.102, the attorney general's office may seek restitution and petition a district court for the assessment of a civil penalty as provided by this chapter. (Bus. & Com. Code, Secs. 37.04(a) (part), 37.05(a), (b).)

Sec. 301.104. CIVIL ACTION. A consumer injured by a violation of this chapter may bring an action for recovery of damages. The damages awarded may not be less than the amount the consumer paid the person who sold the consumer goods or services through the use of the telephone solicitor, plus reasonable attorney's fees and court costs. (Bus. & Com. Code, Sec. 37.05(c).)

Sec. 301.105. VENUE. Venue for an action brought under this chapter is in:

(1) the county in which the consumer telephone call originated;

(2) the county in which the consumer telephone call was received; or

(3) Travis County. (Bus. & Com. Code, Sec. 37.04(c).)

CHAPTER 302. REGULATION OF TELEPHONE SOLICITATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 302.001. DEFINITIONS

Sec. 302.002. MAKING TELEPHONE SOLICITATION

Sec. 302.003. LIBERAL CONSTRUCTION AND APPLICATION

Sec. 302.004. ATTEMPTED WAIVER VOID

[Sections 302.005-302.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

Sec. 302.051. BURDEN OF PROOF

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CHAPTER 302. REGULATION OF TELEPHONE SOLICITATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Item" means property or a service. The term includes a coupon book to be used with a business.

(2) "Owner" means a person who has control of or is entitled to, by ownership or other claim, at least 10 percent of a seller's net income.

(3) "Purchaser" means a person who:

(A) is solicited to become or becomes obligated for the purchase or rental of an item; or

(B) is offered an opportunity to claim or receive an item.

(4) "Salesperson" means a person who is employed or authorized by a seller to make a telephone solicitation.

(5) "Seller" means a person who makes a telephone solicitation on the person's own behalf.

(6) "Supervised financial institution" means a bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, insurer, or other financial institution that is subject to supervision by an official or agency of this state or the United States.

(7) "Telephone solicitation" means a telephone call a seller or salesperson initiates to induce a person to purchase, rent, claim, or receive an item. The term includes a telephone call a purchaser makes in response to a solicitation sent by mail or made by any other means. (Bus. & Com. Code, Sec. 38.001.)

Sec. 302.002. MAKING TELEPHONE SOLICITATION. For purposes of this chapter, a person makes a telephone solicitation if the person effects or attempts to effect a telephone solicitation, including a solicitation initiated by an automatic dialing machine

or a recorded message device. (Bus. & Com. Code, Sec. 38.002.)

Sec. 302.003. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons against false, misleading, or deceptive practices in the telephone solicitation business. (Bus. & Com. Code, Sec. 38.003.)

Sec. 302.004. ATTEMPTED WAIVER VOID. An attempted waiver of a provision of this chapter is void. (Bus. & Com. Code, Sec. 38.305.)

[Sections 302.005-302.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

Sec. 302.051. BURDEN OF PROOF. (a) In a civil proceeding in which a violation of this chapter is alleged, a person who claims an exemption from the application of this chapter has the burden of proving the exemption.

(b) In a criminal proceeding in which a violation of this chapter is alleged, a person who claims an exemption from the application of this chapter as a defense to prosecution has the burden of producing evidence to support the defense. (Bus. & Com. Code, Sec. 38.051.)

Sec. 302.052. EXEMPTIONS APPLY ONLY TO SELLERS; EXCEPTION. Except as provided by Section 302.060, an exemption from the application of this chapter applies only to a seller. (Bus. & Com. Code, Sec. 38.052.)

Sec. 302.053. EXEMPTION: PERSONS REGULATED BY OTHER LAW. This chapter does not apply to:

(1) a person offering or selling a security that has

been qualified for sale under Section 7, The Securities Act (Article 581-7, Vernon's Texas Civil Statutes), or that is subject to an exemption under Section 5 or 6 of that Act;

(2) a publicly traded corporation registered with the Securities and Exchange Commission or the State Securities Board, or a subsidiary or agent of the corporation;

(3) a person who holds a license issued under the Insurance Code if the solicited transaction is governed by that code;

(4) a supervised financial institution or a parent, a subsidiary, or an affiliate of a supervised financial institution;

(5) a person whose business is regulated by the Public Utility Commission of Texas or an affiliate of that person, except that this chapter applies to such a person or affiliate only with respect to one or more automated dial announcing devices;

(6) a person subject to the control or licensing regulations of the Federal Communications Commission;

(7) a person selling a contractual plan regulated by the Federal Trade Commission trade regulation on use of negative option plans by sellers in commerce under 16 C.F.R. Part 425;

(8) a person subject to filing requirements under Chapter 1803, Occupations Code; or

(9) a person who:

(A) is soliciting a transaction regulated by the Commodity Futures Trading Commission; and

(B) is registered or holds a temporary license for the activity described by Paragraph (A) with the Commodity

Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), if the registration or license has not expired or been suspended or revoked. (Bus. & Com. Code, Sec. 38.053.)

Sec. 302.054. EXEMPTION: PERSONS SELLING MEDIA SUBSCRIPTIONS, CERTAIN MERCHANDISE, OR ITEMS FROM CERTAIN CATALOGS. This chapter does not apply to:

(1) a person soliciting the sale of a subscription to:

(A) a daily or weekly newspaper of general circulation;

(B) a magazine or other periodical of general circulation; or

(C) a cable television service;

(2) a person selling merchandise under an arrangement in which the seller periodically ships the merchandise to a consumer who has consented in advance to receive the merchandise periodically; or

(3) a person periodically issuing and delivering to purchasers catalogs that each:

(A) include a written description or illustration and the sales price of each item offered for sale;

(B) include at least 24 full pages of written material or illustrations;

(C) are distributed in more than one state; and

(D) have an annual circulation of at least 250,000 customers. (Bus. & Com. Code, Sec. 38.054.)

Sec. 302.055. EXEMPTION: EDUCATIONAL AND NONPROFIT

ORGANIZATIONS. This chapter does not apply to an educational institution or organization or a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986. (Bus. & Com. Code, Sec. 38.055.)

Sec. 302.056. EXEMPTION: CERTAIN COMMERCIAL SALES. This chapter does not apply to a sale in which the purchaser is a business that intends to:

(1) resell the item purchased; or

(2) use the item purchased in a recycling, reuse, remanufacturing, or manufacturing process. (Bus. & Com. Code, Sec. 38.056.)

Sec. 302.057. EXEMPTION: PERSON SOLICITING FOOD SALES. This chapter does not apply to a person soliciting the sale of food. (Bus. & Com. Code, Sec. 38.057.)

Sec. 302.058. EXEMPTION: SOLICITATION OF FORMER OR CURRENT CUSTOMERS. This chapter does not apply to:

(1) the solicitation of a contract for the maintenance or repair of an item previously purchased from the person making the solicitation or on whose behalf the solicitation is made; or

(2) a person who:

(A) is soliciting business from a former or current customer; and

(B) has operated under the same business name for at least two years. (Bus. & Com. Code, Sec. 38.058.)

Sec. 302.059. EXEMPTION: PERSONS WHO MAKE CERTAIN SALES PRESENTATIONS OR MAKE SALES AT ESTABLISHED RETAIL LOCATIONS. This chapter does not apply to:

(1) a person conducting a telephone solicitation who:

(A) does not intend to complete or obtain provisional acceptance of a sale during the telephone solicitation;

(B) does not make a major sales presentation during the telephone solicitation but arranges for a major sales presentation to be made face-to-face at a later meeting between the salesperson and the purchaser; and

(C) does not cause an individual to go to the purchaser to collect payment for the purchase or to deliver an item purchased directly following the telephone solicitation; or

(2) a person who for at least two years, under the same name as that used in connection with the person's telemarketing operations, has operated a retail establishment where consumer goods are displayed and offered for sale continuously, if a majority of the person's business involves buyers obtaining services or products at the retail establishment. (Bus. & Com. Code, Sec. 38.059.)

Sec. 302.060. EXEMPTION: CERTAIN PERSONS PROVIDING TELEPHONE SOLICITATION SERVICES PREDOMINANTLY FOR EXEMPT PERSONS. This chapter does not apply to a person:

(1) who provides telephone solicitation services under contract to a seller;

(2) who has been operating continuously for at least three years under the same business name; and

(3) for whom at least 75 percent of the person's contracts are performed on behalf of other persons exempt from the application of this chapter under this section. (Bus. & Com. Code,

Sec. 38.060(a).)

Sec. 302.061. EXEMPTION: PERSONS CONDUCTING CERTAIN ISOLATED TELEPHONE SOLICITATIONS. This chapter does not apply to a person engaging in a telephone solicitation that:

(1) is an isolated transaction; and

(2) is not done in the course of a pattern of repeated transactions of a similar nature. (Bus. & Com. Code, Sec. 38.061.)

[Sections 302.062-302.100 reserved for expansion]

SUBCHAPTER C. REGISTRATION

Sec. 302.101. REGISTRATION CERTIFICATE REQUIRED. (a) A seller may not make a telephone solicitation from a location in this state or to a purchaser located in this state unless the seller holds a registration certificate for the business location from which the telephone solicitation is made.

(b) A separate registration certificate is required for each business location from which a telephone solicitation is made. (Bus. & Com. Code, Sec. 38.101.)

Sec. 302.102. FILING OF REGISTRATION STATEMENT; PUBLIC INFORMATION. (a) To obtain a registration certificate, a seller must file with the secretary of state a registration statement that:

(1) is in the form prescribed by the secretary of state;

(2) contains the information required by Subchapter D;

(3) is verified by each principal of the seller; and

(4) specifies the date and location of verification.

(b) Information included in or attached to a registration

statement is public information.

(c) In this section, "principal" means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor, a trustee of a trust, or another individual with similar supervisory functions with respect to any person. (Bus. & Com. Code, Sec. 38.302.)

Sec. 302.103. ISSUANCE OF REGISTRATION CERTIFICATE. (a) The secretary of state shall issue a registration certificate and mail the certificate to the seller when the secretary of state receives:

(1) a completed registration statement required by Section 302.102;

(2) the filing fee prescribed by Section 302.106;

(3) the security required by Section 302.107; and

(4) the consent regarding service of process required by Section 302.108.

(b) If the seller uses a single registration statement to register more than one business location, the secretary of state shall:

(1) issue a registration certificate for each business location; and

(2) mail all the certificates to the principal business location shown on the registration statement. (Bus. & Com. Code, Sec. 38.104.)

Sec. 302.104. EFFECTIVE DATE OF REGISTRATION STATEMENT; RENEWAL. (a) A registration statement takes effect on the date the secretary of state issues the registration certificate and is

effective for one year.

(b) A registration statement may be renewed annually by:

(1) filing a renewal registration statement containing the information required by Subchapter D; and

(2) paying the filing fee prescribed by Section 302.106. (Bus. & Com. Code, Sec. 38.105.)

Sec. 302.105. ADDENDA REQUIREMENTS. (a) For each quarter after the effective date of a registration statement, the seller shall file with the secretary of state an addendum providing the required registration information for each salesperson who is soliciting or has solicited on behalf of the seller during the preceding quarter.

(b) A seller may comply with Subsection (a) by filing with the secretary of state a copy of the "Employer's Quarterly Report" for employee wages that the seller files with the Texas Workforce Commission.

(c) In addition to filing the quarterly addendum, if a material change in information submitted in a registration statement, other than the information described by Subsection (a), occurs before the date for renewal, a seller shall submit that information to the secretary of state by filing an addendum. (Bus. & Com. Code, Sec. 38.106.)

Sec. 302.106. FILING FEE. The filing fee for a registration statement is $200. (Bus. & Com. Code, Sec. 38.103.)

Sec. 302.107. SECURITY REQUIREMENTS. A registration statement must be accompanied by security that:

(1) is in the amount of $10,000;

(2) is in the form of:

(A) a bond executed by a corporate security that:

(i) is approved by the secretary of state; and

(ii) holds a license to transact business in this state;

(B) an irrevocable letter of credit issued for the benefit of the registrant by a supervised financial institution whose deposits are insured by an agency of the federal government; or

(C) a certificate of deposit in a supervised financial institution whose deposits are insured by an agency of the federal government, the principal of which may be withdrawn only on the order of the secretary of state; and

(3) is conditioned on the seller's compliance with this chapter. (Bus. & Com. Code, Sec. 38.107.)

Sec. 302.108. APPOINTMENT OF SECRETARY OF STATE AS AGENT FOR SERVICE. (a) A seller shall file with the secretary of state, in the form prescribed by the secretary of state, an irrevocable consent appointing the secretary of state to act as the seller's agent to receive service of process in a noncriminal action or proceeding that may arise under this chapter against the seller or the seller's successor, executor, or administrator if:

(1) an agent has not been named under Section 302.151(15);

(2) the agent named under Section 302.151(15) has resigned or died and the name of a successor agent has not been

submitted under Section 302.105; or

(3) the agent named under Section 302.151(15) cannot with reasonable diligence be found at the disclosed address.

(b) Service on the secretary of state under this section has the same effect as service on the seller. Service on the secretary of state may be made by:

(1) leaving a copy of the process in the office of the secretary of state;

(2) promptly sending by first class mail a notice of the service and a copy of the process to the seller's principal business location at the last address on file with the secretary of state; and

(3) filing the plaintiff's affidavit of compliance with this section in the action or proceeding on or before the return date of any process or within an additional period that the court allows. (Bus. & Com. Code, Sec. 38.108.)

[Sections 302.109-302.150 reserved for expansion]

SUBCHAPTER D. DISCLOSURES REQUIRED IN REGISTRATION STATEMENT

Sec. 302.151. DISCLOSURE OF CERTAIN NAMES, ADDRESSES, TELEPHONE NUMBERS, AND ORGANIZATIONAL INFORMATION. A registration statement must contain:

(1) the seller's name and, if different from the seller's name, the name under which the seller is transacting or intends to transact business;

(2) the name of each parent and affiliated organization of the seller that:

(A) will transact business with a purchaser

relating to sales solicited by the seller; or

(B) accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller;

(3) the seller's:

(A) form of business; and

(B) place of organization;

(4) for a seller who is a corporation, a copy of the seller's certificate of formation and bylaws;

(5) for a seller who is a partnership, a copy of the partnership agreement;

(6) for a seller who is operating under an assumed business name, the location where the assumed name has been registered;

(7) for any parent or affiliated organization disclosed under Subdivision (2), the applicable information that is required of a seller under Subdivisions (3) through (6);

(8) the complete street address of each location of the seller, designating the principal location from which the seller will be transacting business;

(9) if the principal business location of the seller is not in this state, a designation of the seller's main location in this state;

(10) a listing of each telephone number to be used by the seller and the address where each telephone using the number is located;

(11) the name and title of each of the seller's

officers, directors, trustees, general and limited partners, and owners, as applicable, and the name of each of those persons who has management responsibilities in connection with the seller's business activities;

(12) for each person whose name is disclosed under Subdivision (11) and for each seller who is a sole proprietor:

(A) the complete address of the person's principal residence;

(B) the person's date of birth; and

(C) the number of and state that issued the person's driver's license;

(13) the name and principal residence address of each person the seller leaves in charge at each location from which the seller transacts business in this state and the business location at which each of those persons is or will be in charge;

(14) the name and principal residence address of each salesperson who solicits on the seller's behalf or a copy of the "Employer's Quarterly Report" for employee wages the seller files with the Texas Workforce Commission and the name the salesperson uses while soliciting;

(15) the name and address of the seller's agent in this state, other than the secretary of state, who is authorized to receive service of process; and

(16) the name and address of each financial institution with which the seller makes banking or similar monetary transactions and the identification number of each of the seller's accounts in each institution. (Bus. & Com. Code, Sec. 38.151.)

Sec. 302.152. DISCLOSURE OF CERTAIN CONVICTIONS, PLEAS, JUDGMENTS, ORDERS, BANKRUPTCIES, AND REORGANIZATIONS. (a) With respect to the seller and each person identified under Section 302.151(11) or (13), a registration statement must identify each person:

(1) who has been convicted of or pleaded nolo contendere to:

(A) an offense involving an alleged violation of this chapter; or

(B) fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property;

(2) against whom a final judgment or order has been entered in a civil or administrative action, including a stipulated judgment or order, in which the complaint or petition alleged:

(A) acts constituting:

(i) a violation of this chapter; or

(ii) fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property;

(B) the use of false or misleading representations in an attempt to sell or otherwise dispose of property; or

(C) the use of unfair, unlawful, or deceptive business practices;

(3) who is subject to an injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency, including an action affecting a vocational license; or

(4) who, during the previous seven tax years:

(A) has filed in bankruptcy;

(B) has been adjudged a bankrupt;

(C) has been reorganized because of insolvency; or

(D) has been a principal, director, officer, trustee, or general or limited partner of, or had management responsibilities for, a corporation, partnership, joint venture, or other business entity that has filed in bankruptcy, been adjudged a bankrupt, or been reorganized because of insolvency while the person held that position or on or before the first anniversary of the date on which the person last held that position.

(b) For each person identified under Subsection (a)(1), (2), or (3), the statement must disclose:

(1) the court that received the plea of nolo contendere or the court or administrative agency that rendered the conviction, judgment, or order;

(2) the docket number of the matter;

(3) the date the plea of nolo contendere was received or the date of the conviction, judgment, or order; and

(4) the name of any government agency that brought the action resulting in the plea or the conviction, judgment, or order.

(c) For each person identified under Subsection (a)(4), the statement must disclose:

(1) the name and location of the person filing in bankruptcy, adjudged a bankrupt, or reorganized because of insolvency;

(2) the date of the filing, judgment, or reorganization order;

(3) the court having jurisdiction; and

(4) the docket number of the matter. (Bus. & Com. Code, Sec. 38.152.)

Sec. 302.153. DISCLOSURE OF CERTAIN SALES INFORMATION. (a) A registration statement must be accompanied by:

(1) a description of the items the seller is offering for sale;

(2) a copy of all sales information and literature, including scripts, outlines, instructions, and information regarding the conduct of telephone solicitations, sample introductions, sample closings, product information, and contest or premium-award information, that the seller provides to salespersons or about which the seller informs salespersons;

(3) a copy of all written material the seller sends to any purchaser; and

(4) as applicable, the information and documents specified by Subsections (b) through (h).

(b) If the seller represents or implies, or directs a salesperson to represent or imply, to a purchaser that the purchaser will receive a specific item, including a certificate that the purchaser must redeem to obtain the item described in the certificate, or one or more items from among designated items, regardless of whether the items are designated as gifts, premiums, bonuses, or prizes or otherwise, the registration statement must be accompanied by:

(1) a list of the items described;

(2) the value of each item and the basis for the valuation;

(3) the price the seller paid for each item to the seller's supplier and the name, address, and telephone number of each item's supplier;

(4) all rules and terms a purchaser must meet to receive the item; and

(5) if the purchaser will not receive all of the items described by the seller:

(A) the manner in which the seller decides which item a particular purchaser is to receive;

(B) for each item, the odds of a single purchaser receiving the item; and

(C) the name and address of each purchaser who has received, during the preceding 12 months, the item with the greatest value and the item with the lowest odds of being received.

(c) If the seller is offering an item that the seller does not manufacture or supply, the registration statement must be accompanied by:

(1) the name, address, and telephone number of each of the seller's suppliers;

(2) a description of each item provided by each supplier named in Subdivision (1); and

(3) as applicable, the information and documents specified by Subsections (d) through (g).

(d) If the seller is offering an item that the seller does

not manufacture or supply and the possession of the item is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the registration statement must be accompanied by:

(1) the address of each location where the item will be kept;

(2) if the item is not kept on premises owned by the seller or at an address registered under Section 302.151(8) or (9), the name of the owner of the business at which the item will be kept; and

(3) a copy of any contract or other document that evidences the seller's right to store the item at the address designated under Subdivision (2).

(e) If the seller is offering an item that the seller does not manufacture or supply and the seller is not selling the item from the seller's own inventory but purchases the item to fill an order previously taken from a purchaser, the registration statement must be accompanied by a copy of each contract or other document that evidences the seller's ability to call on suppliers to fill the seller's orders.

(f) If the seller is offering an item that the seller does not manufacture or supply and the seller represents to purchasers that the seller has insurance or a surety bond relating to a purchaser's purchase of an item, the registration statement must be accompanied by a copy of each insurance policy or bond.

(g) If the seller is offering an item that the seller does not manufacture or supply and the seller makes a representation

regarding the post-purchase earning or profit potential of an item, the registration statement must be accompanied by:

(1) data to substantiate the claims made; and

(2) if the representation relates to previous sales made by the seller or a related entity, substantiating data based on the experiences of at least 50 percent of purchasers of that particular type of item from the seller or related entity during the preceding six months, including:

(A) the period the seller or related entity has been selling the particular type of item being offered;

(B) the number of purchasers of the item known to the seller or related entity to have made at least the same earnings or profit as those represented; and

(C) the percentage that the number disclosed under Paragraph (B) represents of the total number of purchasers from the seller or related entity of the particular type of item offered.

(h) If the seller is offering to sell an interest in an oil, gas, or mineral field, well, or exploration site, the registration statement must be accompanied by:

(1) any ownership interest of the seller in each field, well, or site being offered for sale;

(2) the total number of interests to be sold in each field, well, or site being offered for sale; and

(3) if, in selling an interest in any particular field, well, or site, reference is made to an investigation of the field, well, or site by the seller or anyone else:

(A) the name, business address, telephone number, and professional credentials of the person who conducted the investigation; and

(B) a copy of the report and other documents relating to the investigation prepared by the person who conducted the investigation. (Bus. & Com. Code, Sec. 38.153.)

[Sections 302.154-302.200 reserved for expansion]

SUBCHAPTER E. ADDITIONAL INFORMATION FROM SELLER

Sec. 302.201. INFORMATION REQUIRED TO BE POSTED OR AVAILABLE AT SELLER'S BUSINESS LOCATION. (a) A seller shall post the registration certificate in a conspicuous place at the location for which the certificate is issued.

(b) A seller shall post in close proximity to the registration certificate the name of each individual in charge of the location.

(c) A seller shall make available at each of the seller's business locations a copy of the entire registration statement and any addenda for inspection by a purchaser or by a representative of a government agency. (Bus. & Com. Code, Sec. 38.201.)

Sec. 302.202. DISCLOSURES REQUIRED BEFORE PURCHASE. When a telephone solicitation is made and before consummation of any sales transaction, a seller shall provide to each purchaser:

(1) the complete street address of the location from which the salesperson is calling the purchaser and, if different, the complete street address of the seller's principal location;

(2) if the seller represents or implies that a purchaser will receive without charge a specified item or one item

from among designated items, regardless of whether the items are designated as gifts, premiums, bonuses, prizes, or otherwise:

(A) the information required to be filed by Sections 302.153(b)(4) and (5)(A) and (B), as appropriate; and

(B) the total number of individuals who have actually received from the seller during the preceding 12 months the item having the greatest value and the item with the smallest odds of being received;

(3) if the seller is offering to sell an interest in an oil, gas, or mineral field, well, or exploration site, the information required by Section 302.153(h); and

(4) if the seller represents that an item is being offered at a price below that usually charged for the item, the name of the item's manufacturer. (Bus. & Com. Code, Sec. 38.202.)

Sec. 302.203. REFERENCE TO COMPLIANCE WITH STATUTE PROHIBITED. A seller may not make or authorize the making of a reference to the seller's compliance with this chapter to a purchaser. (Bus. & Com. Code, Sec. 38.203.)

[Sections 302.204-302.250 reserved for expansion]

SUBCHAPTER F. OFFENSES

Sec. 302.251. VIOLATION OF CERTAIN PROVISIONS. (a) A person commits an offense if the person knowingly violates Section 302.101, 302.105, 302.201, 302.202, or 302.203. Each violation constitutes a separate offense.

(b) An offense under this section is a Class A misdemeanor. (Bus. & Com. Code, Sec. 38.251.)

Sec. 302.252. ACTING AS SALESPERSON FOR UNREGISTERED

SELLER. (a) A person commits an offense if the person knowingly acts as a salesperson on behalf of a seller who violates the registration requirements of this chapter. Each violation constitutes a separate offense.

(b) An offense under this section is a Class A misdemeanor. (Bus. & Com. Code, Sec. 38.252.)

Sec. 302.253. REQUEST FOR CREDIT CARD ACCOUNT NUMBER OR CHECKING ACCOUNT NUMBER AFTER OFFER OF FREE ITEM. (a) A seller commits an offense if the seller knowingly:

(1) represents or implies that a purchaser will receive an item without charge, regardless of whether the item is designated as a gift, premium, bonus, or prize or otherwise; and

(2) requests a credit card account number or checking account number from the purchaser to charge to the credit card account or debit from the checking account an amount as a condition precedent to the purchaser's receipt of the item.

(b) An offense under this section is a Class A misdemeanor. (Bus. & Com. Code, Sec. 38.253.)

[Sections 302.254-302.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

Sec. 302.301. INJUNCTION. (a) The attorney general may bring an action to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is filed, except that notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

(c) The attorney general is entitled to recover all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees. (Bus. & Com. Code, Sec. 38.301.)

Sec. 302.302. CIVIL PENALTIES. (a) A person who violates this chapter is subject to a civil penalty of not more than $5,000 for each violation.

(b) A person who violates an injunction issued under Section 302.301 is liable to this state for a civil penalty of not more than:

(1) $25,000 for each violation of the injunction; and

(2) $50,000 for all violations of the injunction.

(c) The attorney general may bring an action to recover a civil penalty under Subsection (b) in the court that issued the original injunction.

(d) The party bringing the action also is entitled to recover all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees. (Bus. & Com. Code, Sec. 38.302.)

Sec. 302.303. DECEPTIVE TRADE PRACTICES. (a) A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

(b) A public or private right or remedy prescribed by Subchapter E, Chapter 17, may be used to enforce this chapter. (Bus. & Com. Code, Sec. 38.303.)

Sec. 302.304. ACTION TO RECOVER AGAINST SECURITY. (a) A person injured by a seller's bankruptcy or by a seller's breach of

an agreement entered into during a telephone solicitation may bring an action to recover against the security required under Section 302.107.

(b) The liability of the surety on a bond provided under Section 302.107 may not exceed the amount of the bond, regardless of the number of claims filed or the aggregate amount claimed. If the amount claimed exceeds the amount of the bond, the surety shall deposit the amount of the bond with the secretary of state for distribution to claimants entitled to recovery, and the surety is then relieved of all liability under the bond. (Bus. & Com. Code, Sec. 38.304.)

CHAPTER 303. TELEPHONE SOLICITATION FOR CERTAIN LAW ENFORCEMENT-RELATED CHARITABLE ORGANIZATIONS

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CHAPTER 303. TELEPHONE SOLICITATION FOR CERTAIN LAW ENFORCEMENT-RELATED CHARITABLE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 303.001. DEFINITIONS. In this chapter:

(1) "Commercial telephone solicitor" means a person whom a law enforcement-related charitable organization retains to make a telephone solicitation, directly or through another person under the direction of the person retained. The term does not include a bona fide officer, director, or employee of, or volunteer for, a law enforcement-related charitable organization.

(2) "Contribution" means a promise to give or a gift of money or other property, credit, financial assistance, or another thing of any kind or value. The term does not include:

(A) volunteer services; or

(B) bona fide fees, dues, or assessments a member pays if membership is not conferred solely as consideration for making a contribution in response to a telephone solicitation.

(3) "Law enforcement-related charitable organization" means a person who solicits a contribution and is or purports to be established or operating for a charitable purpose relating to law enforcement. The term includes a nongovernmental law enforcement organization or publication and survivors of law enforcement officers killed in the line of duty. The term does not include a governmental law enforcement agency or organization.

(4) "Telephone solicitation" means the use of a telephone to solicit another person to make a charitable contribution to a law enforcement-related charitable organization. (V.A.C.S. Art. 9023e, Secs. 2(1), (2), (3), (6).)

Sec. 303.002. SOLICITATION GOVERNED BY CHAPTER. The telephone solicitation of a contribution from a person in this state is considered to be engaging in telephone solicitation in this state regardless of where the solicitation originates. (V.A.C.S. Art. 9023e, Sec. 1.)

Sec. 303.003. PUBLIC ACCESS TO CERTAIN DOCUMENTS AND INFORMATION. (a) Except as provided by Subsection (b), a document required to be filed with the attorney general under this chapter is public information available to members of the public under Chapter

552, Government Code.

(b) A document that identifies the donors to a law enforcement-related charitable organization is confidential and not subject to disclosure. (V.A.C.S. Art. 9023e, Sec. 3(b).)

Sec. 303.004. RULES; PROCEDURES; FORMS. The attorney general may adopt rules, procedures, and forms necessary to administer and enforce this chapter. (V.A.C.S. Art. 9023e, Sec. 14.)

[Sections 303.005-303.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS

Sec. 303.051. RECORD OF ORGANIZATIONS. The attorney general shall maintain:

(1) a register of law enforcement-related charitable organizations subject to this chapter; and

(2) a registry of law enforcement-related charitable organizations that submit to the attorney general a completed registration statement containing the information required by Section 303.052. (V.A.C.S. Art. 9023e, Secs. 3(a), 4(a) (part).)

Sec. 303.052. FORM AND CONTENT OF REGISTRATION STATEMENT. A registration statement under Section 303.051(2) must be submitted on a form the attorney general prescribes or approves and must contain:

(1) for each of the organization's offices, chapters, local units, branches, and affiliates:

(A) the legal name and each assumed name;

(B) the mailing address and street address; and

(C) each telephone number and facsimile number;

(2) the organization's employer identification number;

(3) the name, title, address, and telephone number of:

(A) the organization's executive director or other chief operating officer; and

(B) each of the organization's officers and directors;

(4) the name of each officer, director, or employee:

(A) whom the organization compensates or who has custody and control of the organization's money; and

(B) who has been convicted of or pleaded nolo contendere to:

(i) a felony; or

(ii) a misdemeanor involving fraud or the theft, misappropriation, misapplication, or misuse of another's property;

(5) for each person listed under Subdivision (4), a statement of:

(A) the offense; and

(B) the state, court, and date of each conviction or plea of nolo contendere;

(6) if the organization is a corporation, the date and state of incorporation;

(7) if the organization is not a corporation, the type of organization and date established;

(8) the date the organization began transacting business in this state;

(9) the name and address of the organization's registered agent in this state;

(10) a statement of the organization's charitable purposes;

(11) a list of the programs for which funds are solicited;

(12) the day and month on which the organization's fiscal year ends;

(13) a statement of whether the organization:

(A) is eligible to receive tax-deductible contributions under Section 170, Internal Revenue Code of 1986; and

(B) has applied for or been granted tax-exempt status by the Internal Revenue Service and, if so:

(i) the Internal Revenue Code of 1986 section on which the application was based;

(ii) the application date;

(iii) the date the exemption was granted or denied; and

(iv) a statement of whether or when the tax exemption has ever been denied, revoked, or modified;

(14) a statement that includes:

(A) the method of accounting used and the name, address, and telephone number of each of the organization's accountants and auditors;

(B) for the preceding 12 months:

(i) the total contributions received;

(ii) the total fund-raising costs, computed

according to generally accepted accounting principles;

(iii) if the organization retained a commercial telephone solicitor:

(a) the name and address of each commercial telephone solicitor; and

(b) a written confirmation from each commercial telephone solicitor that it has complied with all state and local registration laws; and

(iv) the amount paid to commercial telephone solicitors; and

(C) a statement that:

(i) the organization has attempted in good faith to comply with each ordinance of a municipality or each order of a county in this state regarding telephone solicitation that has been filed with the attorney general; or

(ii) no ordinance or order described by Subparagraph (i) applies;

(15) if the organization files a federal tax return, a copy of:

(A) the organization's most recently filed Internal Revenue Service Form 990 and other federal tax returns;

(B) each supplement, amendment, and attachment to those returns; and

(C) each request for an extension to file any of those returns;

(16) if the organization does not file a federal tax return:

(A) a statement of the reason a return is not filed; and

(B) the organization's most recent financial statements, including audited financial statements, if any have been prepared; and

(17) a sworn statement verifying that the information contained in the registration statement and each attachment to the registration statement is true, correct, and complete to the best of the affiant's knowledge. (V.A.C.S. Art. 9023e, Secs. 4(a) (part), (e).)

Sec. 303.053. INITIAL REGISTRATION STATEMENT. A law enforcement-related charitable organization shall file the organization's initial registration statement before the 10th working day before the date the organization begins telephone solicitation in this state. (V.A.C.S. Art. 9023e, Sec. 4(b).)

Sec. 303.054. EXPIRATION OF REGISTRATION; RENEWAL. (a) A law enforcement-related charitable organization's registration expires on the 15th day of the fifth month after the last day of the organization's fiscal year.

(b) The organization shall file a renewal registration statement on the form required under Section 303.052. The renewal registration statement must include the organization's name and employer identification number and any changes to information previously submitted to the attorney general. For an item on which there is no change from the previous year's registration statement, "no change" may be indicated. (V.A.C.S. Art. 9023e, Sec. 4(c).)

Sec. 303.055. FILING FEE. (a) An initial registration

statement must be accompanied by a filing fee not to exceed $50.

(b) A renewal registration statement must be accompanied by a filing fee of $50. (V.A.C.S. Art. 9023e, Sec. 4(d).)

Sec. 303.056. EXEMPTION: VOLUNTEER. A volunteer authorized to solicit on behalf of a law enforcement-related charitable organization is not required to register under this chapter. (V.A.C.S. Art. 9023e, Sec. 4(f).)

Sec. 303.057. REGISTRATION DOES NOT IMPLY ENDORSEMENT. (a) Registration under this chapter does not imply endorsement by this state or the attorney general.

(b) A law enforcement-related charitable organization may not state or imply that registration under this chapter is endorsement by this state or the attorney general. (V.A.C.S. Art. 9023e, Sec. 8.)

Sec. 303.058. BOOKS AND RECORDS. (a) A law enforcement-related charitable organization required to file a registration statement shall maintain books and records of the organization's activities in this state. The books and records must be maintained:

(1) in a form that enables the organization to accurately provide the information required by this chapter; and

(2) until at least the third anniversary of the end of the period to which the registration statement relates.

(b) On written request of authorized personnel of the attorney general, the organization shall make the books and records available for inspection and copying by authorized personnel:

(1) at the organization's principal place of business

not later than the 10th working day after the date of the request; or

(2) at another agreed place and time.

(c) The authority provided by this section is in addition to the attorney general's other statutory or common law audit or investigative authority. (V.A.C.S. Art. 9023e, Sec. 7.)

Sec. 303.059. BOND. A commercial telephone solicitor shall post with the secretary of state a surety bond that:

(1) is in the amount of $50,000; and

(2) is issued by a surety company authorized to transact business in this state. (V.A.C.S. Art. 9023e, Sec. 5.)

[Sections 303.060-303.100 reserved for expansion]

SUBCHAPTER C. SOLICITATION PRACTICES

Sec. 303.101. DECEPTIVE ACT OR PRACTICE. A person may not commit an unfair or deceptive act or practice in making a telephone solicitation for a law enforcement-related charitable organization. (V.A.C.S. Art. 9023e, Sec. 13(a).)

Sec. 303.102. REPRESENTATION OF BENEFIT TO SURVIVORS. A person may not represent to a person solicited that a contribution is to be used to benefit the survivors of a law enforcement officer killed in the line of duty unless:

(1) all of the contributions collected are used to benefit those survivors; or

(2) the person solicited is informed in writing of the percentage of the contribution that will directly benefit those survivors. (V.A.C.S. Art. 9023e, Sec. 13(b).)

Sec. 303.103. NOTICE OF DISPOSITION OF MONEY. (a) If less

than 90 percent of the contributions collected by a law enforcement-related charitable organization or commercial telephone solicitor are paid to a law enforcement-related charitable organization, the commercial telephone solicitor shall notify each person solicited by telephone, before accepting a contribution from the person, of:

(1) the percentage of the contributions that will be paid to the organization for which the contributions are being solicited; and

(2) the percentage of the contributions that the solicitor will retain.

(b) Information required to be disclosed under Subsection (a) shall also be included on any written statement mailed to the contributor. (V.A.C.S. Art. 9023e, Sec. 12(a).)

Sec. 303.104. HOURS OF SOLICITATION. A law enforcement-related charitable organization or commercial telephone solicitor may not make a telephone solicitation call unless the call is made after 9 a.m. and before 7 p.m., Monday through Friday. (V.A.C.S. Art. 9023e, Sec. 12(b).)

[Sections 303.105-303.150 reserved for expansion]

SUBCHAPTER D. VIOLATION; REMEDIES

Sec. 303.151. NOTIFICATION OF NONCOMPLIANCE. If a law enforcement-related charitable organization does not file a document required by this chapter, files an incomplete or inaccurate document, or otherwise does not comply with this chapter, the attorney general shall notify the organization of the organization's noncompliance by first class mail sent to the

organization's last reported address. (V.A.C.S. Art. 9023e, Sec. 6(a).)

Sec. 303.152. VIOLATIONS RELATING TO FILING OF DOCUMENTS. (a) A law enforcement-related charitable organization violates this chapter if the organization:

(1) does not file complete documents before the 31st day after the date a notice under Section 303.151 is mailed; or

(2) with actual awareness files materially inaccurate documents.

(b) For purposes of Subsection (a)(2), actual awareness may be inferred from an objective manifestation that indicates that a person acted with actual awareness. (V.A.C.S. Art. 9023e, Secs. 2(4), 6(b).)

Sec. 303.153. REMEDIES. (a) The attorney general may bring an action against a person who violates this chapter to:

(1) cancel or suspend the person's registration;

(2) obtain an injunction to restrain the person from continuing the violation;

(3) restrain the person from transacting business in this state while violating this chapter;

(4) impose a civil penalty of not more than $25,000 for each violation; or

(5) both obtain an injunction and impose a civil penalty.

(b) A person who violates an injunction issued under this section is liable to this state for a civil penalty of not less than $100,000.

(c) In an action that the attorney general successfully prosecutes under this chapter, the court may allow the attorney general to recover civil penalties and the reasonable costs, attorney's fees, and expenses, including investigative costs, witness fees, and deposition expenses, incurred in bringing the action.

(d) A remedy authorized by this chapter is in addition to any other procedure or remedy provided by another statutory law or common law. (V.A.C.S. Art. 9023e, Secs. 9, 10 (part).)

Sec. 303.154. VENUE. An action under this chapter must be brought in:

(1) Travis County;

(2) the county in which the law enforcement-related charitable organization has its principal place of business or a fixed and established place of business at the time the action is brought; or

(3) the county in which solicitation occurred. (V.A.C.S. Art. 9023e, Sec. 11.)

CHAPTER 304. TELEMARKETING

SUBCHAPTER A. GENERAL PROVISIONS

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Sec. 304.002. DEFINITIONS

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Sec. 304.004. INAPPLICABILITY OF CHAPTER TO CERTAIN CALLS

Sec. 304.005. LIBERAL CONSTRUCTION AND APPLICATION

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Sec. 304.056. PLACEMENT OF ENTRIES ON NATIONAL DO-NOT-CALL REGISTRY

Sec. 304.057. GENERAL RULEMAKING AUTHORITY

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Sec. 304.059. RULES REGARDING PUBLIC NOTICE

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Sec. 304.061. EDUCATIONAL PROGRAMS

Sec. 304.062. ASSISTANCE OF DEPARTMENT OF INFORMATION RESOURCES

[Sections 304.063-304.100 reserved for expansion]

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Sec. 304.102. ACKNOWLEDGMENT REQUIRED; TRANSMISSION PROHIBITED

[Sections 304.103-304.150 reserved for expansion]

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Sec. 304.151. INTERFERENCE WITH CALLER IDENTIFICATION SERVICE OR DEVICE PROHIBITED

Sec. 304.152. EXCEPTION: USE OF CERTAIN SERVICE OR EQUIPMENT

[Sections 304.153-304.200 reserved for expansion]

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SUBCHAPTER F. ENFORCEMENT

Sec. 304.251. ENFORCEMENT BY COMMISSION

Sec. 304.252. ENFORCEMENT BY ATTORNEY GENERAL

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Sec. 304.254. DETERMINATION OF AMOUNT OF ADMINISTRATIVE PENALTY

Sec. 304.255. STAY OF ADMINISTRATIVE PENALTY

Sec. 304.256. CONTESTED CASE

Sec. 304.257. PRIVATE ACTION: TELEMARKETING CALLS

Sec. 304.258. PRIVATE ACTION: FACSIMILE TRANSMISSION

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CHAPTER 304. TELEMARKETING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 304.001. SHORT TITLE. This chapter may be cited as the Texas Telemarketing Disclosure and Privacy Act. (Bus. & Com. Code, Sec. 44.001.)

Sec. 304.002. DEFINITIONS. In this chapter:

(1) "Caller identification service or device" means a service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.

(2) "Commission" means the Public Utility Commission of Texas.

(3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

(4) "Established business relationship" means a relationship that:

(A) is formed by a voluntary two-way communication between a person and a consumer, regardless of whether consideration is exchanged;

(B) pertains to a consumer good or service offered by the person; and

(C) has not been terminated by either party.

(5) "Facsimile recording device" means a device capable of receiving a facsimile transmission.

(6) "Facsimile solicitation" means a telemarketing call made by a transmission to a facsimile recording device.

(7) "State licensee" means a person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.

(8) "Telemarketer" means a person who makes or causes to be made a telemarketing call.

(9) "Telemarketing call" means an unsolicited telephone call made to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

(10) "Telephone call" means a call or other transmission made to or received at a telephone number, including:

(A) a call made by an automated telephone dialing system;

(B) a transmission to a facsimile recording device; and

(C) a call to a mobile telephone number serviced by a provider of commercial mobile service, as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, Federal Communications Commission rules, or the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), as amended. (Bus. & Com. Code, Secs. 44.002, 44.003(a).)

Sec. 304.003. MAKING TELEMARKETING CALL. For purposes of this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf of another entity. A person makes a telemarketing call on behalf of another entity if, as a result of the telemarketing call, the other entity can:

(1) become entitled to receive money or other property of any kind from a sale solicited during the call; or

(2) receive information obtained during the call to:

(A) extend or offer to extend to the person solicited credit for a consumer good or service; or

(B) directly solicit a sale of a consumer good or service or extend credit for the sale. (Bus. & Com. Code, Sec. 44.004.)

Sec. 304.004. INAPPLICABILITY OF CHAPTER TO CERTAIN CALLS. This chapter does not apply to a call made:

(1) by a consumer:

(A) as the result of a solicitation by a seller or telemarketer; or

(B) in response to general media advertising by a direct mail solicitation that clearly, conspicuously, and truthfully makes all disclosures required by federal or state law;

(2) in connection with:

(A) an established business relationship; or

(B) a business relationship that has been terminated, if the call is made before the later of:

(i) the publication date of the first Texas no-call list in which the consumer's telephone number appears; or

(ii) the first anniversary of the date of termination;

(3) between a telemarketer and a business, other than by a facsimile solicitation, unless the business has informed the telemarketer that the business does not wish to receive a telemarketing call from the telemarketer;

(4) to collect a debt; or

(5) by a state licensee if:

(A) the call is not made by an automated telephone dialing system;

(B) the solicited transaction is not completed until a face-to-face sales presentation by the seller occurs and the consumer is not required to pay or authorize payment until after the presentation; and

(C) the consumer has not informed the telemarketer that the consumer does not wish to receive a telemarketing call from the telemarketer. (Bus. & Com. Code, Sec. 44.003(b).)

Sec. 304.005. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect the public against false, misleading, abusive, or deceptive practices in the telemarketing business. (Bus. & Com. Code, Sec. 44.005.)

Sec. 304.006. ATTEMPTED WAIVER VOID. An attempted waiver of a provision of this chapter is void. (Bus. & Com. Code, Sec. 44.006.)

[Sections 304.007-304.050 reserved for expansion]

SUBCHAPTER B. TEXAS NO-CALL LIST

Sec. 304.051. MAINTENANCE OF TEXAS NO-CALL LIST. (a) The commission shall provide for the operation of a database to compile a list of names, zip codes, and telephone numbers of consumers in this state who object to receiving telemarketing calls or other unsolicited telephone calls.

(b) The Texas no-call list is a combined list consisting of the name and telephone numbers of:

(1) each consumer in this state who has requested to be on that list; and

(2) each person in the portion of the national do-not-call registry maintained by the United States government that relates to this state.

(c) The commission shall:

(1) make available an Internet website at which a person may request that a telephone number be placed on the Texas no-call list; and

(2) provide a toll-free telephone number and mailing address that a person may call or write to obtain a copy of a form to request placement of a telephone number on the Texas no-call list.

(d) The Texas no-call list shall be updated and published on January 1, April 1, July 1, and October 1 of each year.

(e) The commission may contract with a private vendor to maintain the Texas no-call list if the vendor has maintained a no-call list database containing the names and telephone numbers of consumers who have previously requested to be added to a no-call list. A contract under this subsection must require the vendor to publish the Texas portion of the national no-call list in an electronic format for any telemarketer who agrees to use the Texas no-call list only to update the telemarketer's no-call list to include those persons with whom the telemarketer does not have an established business relationship. (Bus. & Com. Code, Secs. 44.101(a), (b), (c) (part).)

Sec. 304.052. TELEMARKETING CALL TO TELEPHONE NUMBER ON LIST PROHIBITED. A telemarketer may not make a telemarketing call

to a telephone number published on the Texas no-call list more than 60 days after the date the telephone number appears on the current list. (Bus. & Com. Code, Sec. 44.102(a).)

Sec. 304.053. EXPIRATION, RENEWAL, AND DELETION OF ENTRY. (a) An entry on the Texas no-call list expires on the third anniversary of the date the entry is first published on the list. An entry may be renewed for successive three-year periods.

(b) The telephone number of a consumer on the Texas no-call list may be deleted from the list if:

(1) the consumer makes a written request; or

(2) the telephone number of the consumer is changed. (Bus. & Com. Code, Sec. 44.101(c) (part).)

Sec. 304.054. FEE. (a) Except as provided by Subsection (b), the commission may charge a person a reasonable amount not to exceed $3 for a request to place a telephone number on the Texas no-call list or to renew an entry on the list.

(b) The commission shall provide a method for placement or renewal of an entry by use of the Internet at no charge. (Bus. & Com. Code, Sec. 44.101(c) (part).)

Sec. 304.055. PUBLICATION IN TELEPHONE DIRECTORY. A private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost shall include in the directory a prominently displayed Internet website address, toll-free number, and mailing address established by the commission through which a person may request placement of a telephone number on the Texas no-call list or order a copy of the form to make that request. (Bus. & Com. Code, Sec. 44.101(c)

(part).)

Sec. 304.056. PLACEMENT OF ENTRIES ON NATIONAL DO-NOT-CALL REGISTRY. The commission or a person the commission designates may:

(1) provide information on the Texas no-call list to the administrator of the national do-not-call registry; and

(2) allow the names and telephone numbers on the Texas no-call list to be placed on the national do-not-call registry. (Bus.& Com. Code, Sec. 44.101(d).)

Sec. 304.057. GENERAL RULEMAKING AUTHORITY. The commission may adopt rules to administer this subchapter and Subchapter F, other than Sections 304.254, 304.255, 304.256, and 304.258, as that subchapter relates to the Texas no-call list. (Bus. & Com. Code, Sec. 44.103(a) (part).)

Sec. 304.058. RULES REGARDING ISOLATED CALLS. The commission shall adopt rules providing that a telemarketing call made to a telephone number on the Texas no-call list is not a violation of Section 304.052 if the telemarketing call:

(1) is an isolated occurrence; and

(2) is made by a person who has in place adequate procedures to comply with this subchapter. (Bus. & Com. Code, Sec. 44.103(a) (part).)

Sec. 304.059. RULES REGARDING PUBLIC NOTICE. The commission shall adopt rules requiring each local exchange telephone company and each provider of commercial mobile service, as described by Section 304.002(10)(C), that provides commercial mobile service in this state to inform its customers of the

requirements of this subchapter and Sections 304.251, 304.252, 304.253, 304.257, and 304.259, as those sections relate to the Texas no-call list, through:

(1) annual inserts in billing statements mailed to customers;

(2) notification:

(A) included in a customer's electronic bill;

(B) printed on a customer's paper bill;

(C) sent free of charge by messaging service to a customer's mobile telephone number; or

(D) conspicuously published in the consumer information pages of local telephone directories; or

(3) other appropriate means of notice. (Bus. & Com. Code, Sec. 44.103(a) (part).)

Sec. 304.060. RULES REGARDING DISSEMINATION OF LIST. The commission shall adopt rules providing for:

(1) the distribution of the Texas no-call list in formats, including electronic formats, commonly used by persons making telemarketing calls; and

(2) a fee for each distribution, not to exceed $75. (Bus. & Com. Code, Sec. 44.103(a) (part).)

Sec. 304.061. EDUCATIONAL PROGRAMS. In addition to requiring the notice under Section 304.059, the commission may conduct educational programs designed to inform members of the public of their rights and telemarketers of their obligations under this subchapter and Sections 304.251, 304.252, 304.253, 304.257, and 304.259, as those sections relate to the Texas no-call list.

(Bus. & Com. Code, Sec. 44.103(b).)

Sec. 304.062. ASSISTANCE OF DEPARTMENT OF INFORMATION RESOURCES. On request of the commission, the Department of Information Resources shall assist the commission in administering this subchapter. (Bus. & Com. Code, Sec. 44.104.)

[Sections 304.063-304.100 reserved for expansion]

SUBCHAPTER C. FACSIMILE TRANSMISSIONS

Sec. 304.101. NOTICE IN FACSIMILE SOLICITATION. In addition to complying with the technical and procedural standards established by federal statutes or regulations regarding telephone facsimile machines and transmissions, a person in this state who makes or causes to be made a facsimile solicitation shall include in the transmitted document or on a cover page to the document a statement, in at least 12-point type, containing:

(1) the complete name of the person making the facsimile solicitation and street address of the person's place of business; and

(2) a toll-free or local exchange accessible telephone number of the person that:

(A) is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or

(B) automatically and immediately deletes the specified telephone number of the recipient. (Bus. & Com. Code, Sec. 44.151.)

Sec. 304.102. ACKNOWLEDGMENT REQUIRED; TRANSMISSION

PROHIBITED. On receiving oral or written notice from the recipient of a facsimile solicitation not to send any further facsimile transmissions to one or more specified telephone numbers, the person making the solicitation:

(1) shall within 24 hours after receiving the notice send the recipient of the solicitation written acknowledgment of the receipt; and

(2) other than a single transmission to comply with Subdivision (1), may not make or cause to be made a transmission to a telephone number specified by the recipient. (Bus. & Com. Code, Sec. 44.152.)

[Sections 304.103-304.150 reserved for expansion]

SUBCHAPTER D. CALLER IDENTIFICATION

Sec. 304.151. INTERFERENCE WITH CALLER IDENTIFICATION SERVICE OR DEVICE PROHIBITED. (a) In making a telemarketing call, a telemarketer may not block the identity of the telephone number from which the call is made to evade a device designed to identify a telephone caller.

(b) A telemarketer may not:

(1) interfere with or circumvent the capability of a caller identification service or device to access or provide to the recipient of the telemarketing call any information regarding the call that the service or device is capable of providing; or

(2) fail to provide caller identification information in a manner that is accessible by a caller identification service or device, if the telemarketer is capable of providing the information in that manner. (Bus. & Com. Code, Secs. 44.051(a), (b).)

Sec. 304.152. EXCEPTION: USE OF CERTAIN SERVICE OR EQUIPMENT. For purposes of Section 304.151, use of a telecommunications service or telecommunications equipment that is incapable of transmitting caller identification information does not of itself constitute interference with or circumvention of the capability of a caller identification service or device to access or provide the information. (Bus. & Com. Code, Sec. 44.051(c).)

[Sections 304.153-304.200 reserved for expansion]

SUBCHAPTER E. REGULATORY REPORTS

Sec. 304.201. REPORT BY COMMISSION. (a) Before December 31 of each even-numbered year, the commission shall submit a report to the lieutenant governor and the speaker of the house of representatives.

(b) The report must contain for the two-year period ending August 31 of the year of the report:

(1) a statement of:

(A) the number of telephone numbers included on the Texas no-call list;

(B) the number of no-call lists distributed; and

(C) the amount collected for requests to place telephone numbers and renew entries on the list and for distribution of the list;

(2) a list of complaints the commission received concerning activities regulated by this chapter, itemized by type;

(3) a summary of any enforcement efforts made by the commission; and

(4) the commission's recommendations for any changes

to this chapter. (Bus. & Com. Code, Sec. 44.201.)

Sec. 304.202. REPORT BY ATTORNEY GENERAL. (a) Before December 31 of each even-numbered year, the attorney general shall submit a report to the lieutenant governor and the speaker of the house of representatives.

(b) The report must contain for the two-year period ending August 31 of the year of the report:

(1) a list of complaints the attorney general received concerning activities regulated by this chapter, itemized by type;

(2) a summary of any enforcement efforts made by the attorney general; and

(3) the attorney general's recommendations for any changes to this chapter. (Bus. & Com. Code, Sec. 44.202.)

[Sections 304.203-304.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 304.251. ENFORCEMENT BY COMMISSION. (a) Except as provided by Section 304.253, the commission shall receive and investigate complaints concerning violations of Subchapters B, C, and D and may impose an administrative penalty not to exceed $1,000 for each violation.

(b) Notwithstanding Section 304.252, if a complaint alleges that the person violating Subchapter B, C, or D is a telecommunications provider, as defined by Section 51.002, Utilities Code, the commission has exclusive jurisdiction over the violation alleged in the complaint. (Bus. & Com. Code, Secs. 44.052(a), 44.102(b) (part), 44.153(a) (part).)

Sec. 304.252. ENFORCEMENT BY ATTORNEY GENERAL. (a) Except

as provided by Section 304.253, the attorney general may investigate violations of Subchapters B, C, and D and file civil enforcement actions seeking:

(1) a civil penalty in an amount not to exceed $1,000 for each violation, except as provided by Subsection (b);

(2) injunctive relief; and

(3) attorney's fees.

(b) If the court finds the defendant wilfully or knowingly violated Subchapter B, C, or D, the court may increase the amount of the civil penalty to an amount not to exceed $3,000 for each violation.

(c) A violation of Subchapter B, C, or D is subject to enforcement action by the attorney general's consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61. (Bus. & Com. Code, Secs. 44.052(b), 44.102(c), 44.153(b).)

Sec. 304.253. ENFORCEMENT BY LICENSING AGENCY. (a) A state agency that issues a license to a state licensee shall:

(1) receive and investigate complaints concerning violations of Subchapters B and C by the state licensee; and

(2) may receive and investigate complaints concerning violations of Subchapter D by the state licensee.

(b) The state agency may:

(1) impose an administrative penalty not to exceed $1,000 for each violation;

(2) order restitution for any monetary damages of the complainant in the case of a violation of Subchapter B or D; and

(3) suspend or revoke the state licensee's license, if

the agency finds that the licensee wilfully or knowingly violated Subchapter B, C, or D. (Bus. & Com. Code, Secs. 44.052(c), 44.102(d), 44.153(c).)

Sec. 304.254. DETERMINATION OF AMOUNT OF ADMINISTRATIVE PENALTY. The amount of an administrative penalty imposed under this subchapter must be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) any history of previous violations;

(3) the amount necessary to deter a future violation;

(4) any effort to correct the violation; and

(5) any other matter that justice may require. (Bus. & Com. Code, Sec. 44.251.)

Sec. 304.255. STAY OF ADMINISTRATIVE PENALTY. (a) The enforcement of an administrative penalty imposed under this subchapter may be stayed during the time the order is under judicial review if the person on whom the penalty is imposed pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty.

(b) A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right to contest the affidavit as provided by those rules. (Bus. & Com. Code, Sec. 44.252.)

Sec. 304.256. CONTESTED CASE. A proceeding to impose an administrative penalty under this subchapter is a contested case

under Chapter 2001, Government Code. (Bus. & Com. Code, Sec. 44.253.)

Sec. 304.257. PRIVATE ACTION: TELEMARKETING CALLS. (a) A consumer on the Texas no-call list is presumed to be adversely affected by a telemarketer who calls the consumer more than once. The consumer may bring a civil action based on the second or a subsequent violation of Subchapter B if:

(1) the consumer has notified the telemarketer of the alleged violation;

(2) not later than the 30th day after the date of the call, the consumer files with the commission, the attorney general, or a state agency that licenses the person making the call a verified complaint stating the relevant facts surrounding the violation; and

(3) the commission, attorney general, or state agency receiving the complaint does not initiate an administrative action or a civil enforcement action, as appropriate, against the telemarketer named in the complaint before the 121st day after the date the complaint is filed.

(b) If the consumer brings an action based on a violation of Section 304.052 and the court finds that the defendant wilfully or knowingly violated that section, the court may award damages in an amount not to exceed $500 for each violation.

(c) Section 304.251(b) does not affect the right of a consumer to bring an action under Subsection (a). (Bus. & Com. Code, Secs. 44.102(b) (part), (f), (g).)

Sec. 304.258. PRIVATE ACTION: FACSIMILE TRANSMISSION. (a)

A person may bring a civil action based on a violation of Subchapter C:

(1) for damages in an amount equal to the greater of:

(A) the person's actual monetary loss from the violation; or

(B) $500 for each violation;

(2) to enjoin the violation; or

(3) for both damages and an injunction.

(b) If the court finds that the defendant wilfully or knowingly violated Subchapter C, the court may increase the amount of the damages awarded to an amount equal to not more than three times the amount available under Subsection (a)(1).

(c) Section 304.251(b) does not affect the right of a consumer to bring an action under Subsection (a). (Bus. & Com. Code, Secs. 44.153(a) (part), (e), (f).)

Sec. 304.259. VENUE. (a) Venue for an action based on a violation of Subchapter B or C is in:

(1) the county in which the telemarketing call was made or received; or

(2) Travis County, if the action is brought by the commission, the attorney general, or a state agency.

(b) Venue for an action under Subchapter D is in Travis County. (Bus. & Com. Code, Secs. 44.052(d), 44.102(e), 44.153(d).)

CHAPTER 305. TELEPHONIC COMMUNICATIONS MADE FOR PURPOSE OF SOLICITATION

SUBCHAPTER A. PROHIBITED COMMUNICATIONS MADE FOR PURPOSE OF SOLICITATION

Sec. 305.001. PROHIBITED TELEPHONE CALLS
Sec. 305.002. PROHIBITED FACSIMILE TRANSMISSIONS: CHARGE TO RECIPIENT
Sec. 305.003. PROHIBITED FACSIMILE TRANSMISSIONS: HOURS OF TRANSMISSION
[Sections 305.004-305.050 reserved for expansion]
SUBCHAPTER B. ENFORCEMENT
Sec. 305.051. INVESTIGATION
Sec. 305.052. CRIMINAL PENALTY
Sec. 305.053. CIVIL ACTION

CHAPTER 305. TELEPHONIC COMMUNICATIONS MADE FOR PURPOSE OF SOLICITATION

SUBCHAPTER A. PROHIBITED COMMUNICATIONS MADE FOR PURPOSE OF SOLICITATION

Sec. 305.001. PROHIBITED TELEPHONE CALLS. A person may not make a telephone call or use an automatic dial announcing device to make a telephone call for the purpose of making a sale if:

(1) the person making the call or using the device knows or should have known that the called number is a mobile telephone for which the called person will be charged for that specific call; and

(2) the called person has not consented to the making of such a call to the person calling or using the device or to the business enterprise for which the person is calling or using the device. (Bus. & Com. Code, Sec. 35.47(a).)

Sec. 305.002. PROHIBITED FACSIMILE TRANSMISSIONS: CHARGE TO RECIPIENT. A person may not make or cause to be made a

transmission for the purpose of a solicitation or sale to a facsimile recording device or other telecopier for which the person receiving the transmission will be charged for the transmission, unless the person receiving the transmission has, before the transmission, consented to the making of the transmission. (Bus. & Com. Code, Sec. 35.47(b).)

Sec. 305.003. PROHIBITED FACSIMILE TRANSMISSIONS: HOURS OF TRANSMISSION. A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device after 11 p.m. and before 7 a.m. (Bus. & Com. Code, Sec. 35.47(c).)

[Sections 305.004-305.050 reserved for expansion]

SUBCHAPTER B. ENFORCEMENT

Sec. 305.051. INVESTIGATION. (a) On complaint of a called person that a person has violated Section 305.001, 305.002, or 305.003, the county or district attorney of the county in which the called person resides shall investigate the complaint and file charges if appropriate.

(b) A telephone company serving the caller or called person is not responsible for investigating a complaint or keeping records relating to this chapter. (Bus. & Com. Code, Sec. 35.47(d).)

Sec. 305.052. CRIMINAL PENALTY. (a) A person who violates Section 305.001, 305.002, or 305.003 commits an offense.

(b) An offense under this section is a Class C misdemeanor. (Bus. & Com. Code, Sec. 35.47(e).)

Sec. 305.053. CIVIL ACTION. (a) A person who receives a communication that violates 47 U.S.C. Section 227, a regulation

adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication for:

(1) an injunction;

(2) damages in the amount provided by this section; or

(3) both an injunction and damages.

(b) A plaintiff who prevails in an action for damages under this section is entitled to the greater of:

(1) $500 for each violation; or

(2) the plaintiff's actual damages.

(c) If the court finds that the defendant committed the violation knowingly or intentionally, the court may increase the amount of the award of damages under Subsection (b) to not more than the greater of:

(1) $1,500 for each violation; or

(2) three times the plaintiff's actual damages. (Bus. & Com. Code, Sec. 35.47(f).)

[Chapters 306-320 reserved for expansion]

SUBTITLE B. ELECTRONIC COMMUNICATIONS

CHAPTER 321. REGULATION OF CERTAIN ELECTRONIC MAIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. DEFINITIONS

[Sections 321.002-321.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED AND REQUIRED CONDUCT

Sec. 321.051. TRANSMISSION OF CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES PROHIBITED

Sec. 321.052. REQUIREMENT FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES

Sec. 321.053. SELLING OR PROVIDING CERTAIN ELECTRONIC MAIL ADDRESSES PROHIBITED

[Sections 321.054-321.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 321.101. TRANSMISSION OF MESSAGE CONTAINING OBSCENE MATERIAL OR MATERIAL DEPICTING SEXUAL CONDUCT; CRIMINAL PENALTY

Sec. 321.102. VIOLATION OF CHAPTER: GENERAL CIVIL PENALTY AND INJUNCTIVE RELIEF

Sec. 321.103. VIOLATION OF CHAPTER: DECEPTIVE TRADE PRACTICE

Sec. 321.104. VIOLATION OF CHAPTER: CIVIL ACTION FOR DAMAGES

Sec. 321.105. ALTERNATIVE RECOVERY FOR PERSONS OTHER THAN ELECTRONIC MAIL SERVICE PROVIDERS

Sec. 321.106. ALTERNATIVE RECOVERY FOR ELECTRONIC MAIL SERVICE PROVIDERS

Sec. 321.107. REQUIRED NOTICE OF CIVIL ACTION TO ATTORNEY GENERAL; CIVIL PENALTY

Sec. 321.108. INTERVENTION IN CIVIL ACTION BY ATTORNEY GENERAL

Sec. 321.109. CERTIFICATION AS CLASS ACTION PROHIBITED

Sec. 321.110. PROTECTION OF SECRECY OR SECURITY

Sec. 321.111. IMMUNITY FROM LIABILITY: COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED BY ERROR OR ACCIDENT

Sec. 321.112. IMMUNITY FROM LIABILITY: TELECOMMUNICATIONS UTILITIES AND ELECTRONIC MAIL SERVICE PROVIDERS

Sec. 321.113. QUALIFIED IMMUNITY FROM LIABILITY OF SENDERS

Sec. 321.114. AUTHORITY TO BLOCK CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES; QUALIFIED IMMUNITY

CHAPTER 321. REGULATION OF CERTAIN ELECTRONIC MAIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Commercial electronic mail message" means an electronic mail message that advertises, offers for sale or lease, or promotes any goods, services, business opportunity, property, or other article, commodity, or thing of value.

(2) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen the message, file, or information.

(3) "Electronic mail service provider" means a person who:

(A) is authorized to transact business in this

state;

(B) is an intermediary in transmitting or receiving electronic mail; and

(C) provides to an end user of an electronic mail service the ability to transmit or receive electronic mail.

(4) "Established business relationship" means a relationship that:

(A) is formed by a voluntary two-way communication between a person and another person, regardless of whether consideration is exchanged;

(B) pertains to a product or service offered by one of the persons; and

(C) has not been terminated by either person.

(5) "Obscene" has the meaning assigned by Section 43.21, Penal Code.

(6) "Sender" means a person who initiates an electronic mail message.

(7) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(8) "Unsolicited commercial electronic mail message" means a commercial electronic mail message transmitted without the consent of the recipient by a person with whom the recipient does not have an established business relationship. The term does not include electronic mail transmitted by an organization using electronic mail to communicate exclusively with members, employees, or contractors of the organization. (Bus. & Com. Code, Secs. 46.001(1), (2), (3), (4), (6), (7), (8), (9).)

[Sections 321.002-321.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED AND REQUIRED CONDUCT

Sec. 321.051. TRANSMISSION OF CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES PROHIBITED. (a) In this section, "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service that is:

(1) assigned through a centralized Internet naming authority; and

(2) composed of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(b) A person may not intentionally transmit a commercial electronic mail message that:

(1) is an unsolicited commercial electronic mail message and falsifies the electronic mail transmission or routing information;

(2) contains false, deceptive, or misleading information in the subject line; or

(3) uses another person's Internet domain name without the other person's consent. (Bus. & Com. Code, Secs. 46.001(5), 46.002.)

Sec. 321.052. REQUIREMENT FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES. (a) A person may not intentionally take an action to transmit an unsolicited commercial electronic mail message unless:

(1) "ADV:" appears first in the subject line of the message or, if the message contains obscene material or material

depicting sexual conduct, "ADV: ADULT ADVERTISEMENT" appears first in the subject line; and

(2) the sender or a person acting on behalf of the sender provides a functioning return electronic mail address to which a recipient of the message may, at no cost to the recipient, send a reply requesting the removal of the recipient's electronic mail address from the sender's electronic mail list.

(b) A sender shall remove a person's electronic mail address from the sender's electronic mail list not later than the third day after the date the sender receives a request for removal of that address under Subsection (a)(2). (Bus. & Com. Code, Sec. 46.003.)

Sec. 321.053. SELLING OR PROVIDING CERTAIN ELECTRONIC MAIL ADDRESSES PROHIBITED. A sender or a person acting on behalf of a sender may not sell or otherwise provide to another the electronic mail address of a person who requests the removal of that address from the sender's electronic mail list as provided by Section 321.052(a)(2), except as required by other law. (Bus. & Com. Code, Sec. 46.004.)

[Sections 321.054-321.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 321.101. TRANSMISSION OF MESSAGE CONTAINING OBSCENE MATERIAL OR MATERIAL DEPICTING SEXUAL CONDUCT; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally takes an action to transmit a message that contains obscene material or material depicting sexual conduct in violation of Section 321.052(a)(1).

(b) An offense under this section is a Class B misdemeanor.

(Bus. & Com. Code, Sec. 46.005.)

Sec. 321.102. VIOLATION OF CHAPTER: GENERAL CIVIL PENALTY AND INJUNCTIVE RELIEF. (a) A person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed the lesser of:

(1) $10 for each unlawful message or unlawful action; or

(2) $25,000 for each day an unlawful message is received or each day an unlawful action is taken.

(b) The attorney general or a prosecuting attorney in the county in which the violation occurs may:

(1) bring an action to recover the civil penalty; and

(2) obtain an injunction to prevent or restrain a violation of this chapter.

(c) The attorney general or prosecuting attorney may recover reasonable expenses incurred in recovering the civil penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(d) Subsection (a) does not apply to a violation of Section 321.107(a). (Bus. & Com. Code, Sec. 46.006.)

Sec. 321.103. VIOLATION OF CHAPTER: DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, and any public or private right or remedy prescribed by that subchapter may be used to enforce this chapter, except as provided by Section 321.109. (Bus. & Com. Code, Sec. 46.007.)

Sec. 321.104. VIOLATION OF CHAPTER: CIVIL ACTION FOR

DAMAGES. (a) A person injured by a violation of this chapter may bring an action to recover:

(1) actual damages, including lost profits; or

(2) an amount described by Section 321.105 or 321.106, as applicable.

(b) A person who prevails in the action is entitled to recover reasonable attorney's fees and court costs. (Bus. & Com. Code, Sec. 46.008(a).)

Sec. 321.105. ALTERNATIVE RECOVERY FOR PERSONS OTHER THAN ELECTRONIC MAIL SERVICE PROVIDERS. (a) In lieu of actual damages, a person injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover an amount equal to the lesser of:

(1) $10 for each unlawful message; or

(2) $25,000 for each day the unlawful message is received.

(b) Subsection (a) does not apply to a person who is an electronic mail service provider. (Bus. & Com. Code, Sec. 46.008(b).)

Sec. 321.106. ALTERNATIVE RECOVERY FOR ELECTRONIC MAIL SERVICE PROVIDERS. In lieu of actual damages, an electronic mail service provider injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover an amount equal to the greater of:

(1) $10 for each unlawful message; or

(2) $25,000 for each day the unlawful message is received. (Bus. & Com. Code, Sec. 46.008(c).)

Sec. 321.107. REQUIRED NOTICE OF CIVIL ACTION TO ATTORNEY GENERAL; CIVIL PENALTY. (a) A person who brings an action under Section 321.104 shall notify the attorney general of the action by mailing a copy of the petition by registered or certified mail not later than the 30th day after the date the petition is filed and at least 10 days before the date set for a hearing on the action.

(b) A person who violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed $200 for each violation. The attorney general may bring an action to recover the civil penalty in the court in which the action under Section 321.104 was brought. (Bus. & Com. Code, Secs. 46.009(a), (c).)

Sec. 321.108. INTERVENTION IN CIVIL ACTION BY ATTORNEY GENERAL. The attorney general may intervene in an action brought under Section 321.104 by:

(1) filing a notice of intervention with the court in which the action is pending; and

(2) serving each party to the action with a copy of the notice of intervention. (Bus. & Com. Code, Sec. 46.009(b).)

Sec. 321.109. CERTIFICATION AS CLASS ACTION PROHIBITED. A court may not certify an action brought under this chapter as a class action. (Bus. & Com. Code, Sec. 46.008(d).)

Sec. 321.110. PROTECTION OF SECRECY OR SECURITY. At the request of a party to an action brought under this chapter, the court, in the court's discretion, may conduct a legal proceeding in a manner that protects:

(1) the secrecy and security of the computer, computer network, computer data, computer program, and computer software

involved so as to prevent a possible recurrence of the same or a similar act by another person; or

(2) any trade secret of a party to the action. (Bus. & Com. Code, Sec. 46.008(e).)

Sec. 321.111. IMMUNITY FROM LIABILITY: COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED BY ERROR OR ACCIDENT. A person may not be held liable under this chapter for a commercial electronic mail message that is transmitted as a result of an error or accident. (Bus. & Com. Code, Sec. 46.011(e).)

Sec. 321.112. IMMUNITY FROM LIABILITY: TELECOMMUNICATIONS UTILITIES AND ELECTRONIC MAIL SERVICE PROVIDERS. (a) In this section, "telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code.

(b) A telecommunications utility or an electronic mail service provider may not be held liable under Section 321.051 or 321.052 and is not subject to a penalty provided by this chapter.

(c) A person injured by a violation of this chapter does not have a cause of action against a telecommunications utility or an electronic mail service provider under this chapter solely because the utility or service provider:

(1) is an intermediary between the sender, or a person acting on behalf of the sender, and the recipient in the transmission of electronic mail that violates this chapter;

(2) provides transmission, routing, relaying, handling, or storing, through an automatic technical process, of an unsolicited commercial electronic mail message through the utility's or service provider's computer network or facilities; or

(3) provides telecommunications services, information services, or other services used in the transmission of an electronic mail message that violates this chapter. (Bus. & Com. Code, Secs. 46.011(a), (b), (c).)

Sec. 321.113. QUALIFIED IMMUNITY FROM LIABILITY OF SENDERS. A sender may not be held liable for the transmission of an electronic mail message that violates this chapter if the sender:

(1) contracts in good faith with an electronic mail service provider to transmit electronic mail messages for the sender; and

(2) has no reason to believe the electronic mail service provider will transmit any of the sender's electronic mail messages in violation of this chapter. (Bus. & Com. Code, Sec. 46.011(f).)

Sec. 321.114. AUTHORITY TO BLOCK CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES; QUALIFIED IMMUNITY. (a) An electronic mail service provider may on its own initiative block the receipt or transmission through its service of any commercial electronic mail message that the service provider reasonably believes is or will be transmitted in violation of this chapter, if the service provider:

(1) provides a process for the prompt, good faith resolution of a dispute related to the blocking with the sender of the commercial electronic mail message; and

(2) makes contact information for the resolution of the dispute accessible to the public on the service provider's Internet website.

(b) An electronic mail service provider who complies with

Subsection (a) may not be held liable for blocking the receipt or transmission through its service of any commercial electronic mail message that the service provider reasonably believes is or will be transmitted in violation of this chapter. (Bus. & Com. Code, Secs. 46.010, 46.011(d).)

CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

Sec. 322.001. SHORT TITLE
Sec. 322.002. DEFINITIONS
Sec. 322.003. SCOPE
Sec. 322.004. PROSPECTIVE APPLICATION
Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT
Sec. 322.006. CONSTRUCTION AND APPLICATION
Sec. 322.007. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS
Sec. 322.008. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS
Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE
Sec. 322.010. EFFECT OF CHANGE OR ERROR
Sec. 322.011. NOTARIZATION AND ACKNOWLEDGMENT
Sec. 322.012. RETENTION OF ELECTRONIC RECORDS; ORIGINALS
Sec. 322.013. ADMISSIBILITY IN EVIDENCE
Sec. 322.014. AUTOMATED TRANSACTION
Sec. 322.015. TIME AND PLACE OF SENDING AND RECEIPT

Sec. 322.016. TRANSFERABLE RECORDS
Sec. 322.017. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES
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CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

Sec. 322.001. SHORT TITLE. This chapter may be cited as the Uniform Electronic Transactions Act. (Bus. & Com. Code, Sec. 43.001.)

Sec. 322.002. DEFINITIONS. In this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or

instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an

electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs. (Bus. & Com. Code, Sec. 43.002.)

Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) a law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law. (Bus. & Com. Code, Sec. 43.003.)

Sec. 322.004. PROSPECTIVE APPLICATION. This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2002. (Bus. & Com. Code, Sec. 43.004.)

Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT. (a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be

waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law. (Bus. & Com. Code, Sec. 43.005.)

Sec. 322.006. CONSTRUCTION AND APPLICATION. This chapter must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (Bus. & Com. Code, Sec. 43.006.)

Sec. 322.007. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an

electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law. (Bus. & Com. Code, Sec. 43.007.)

Sec. 322.008. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS. (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) the record must be posted or displayed in the manner specified in the other law;

(2) except as otherwise provided in Subsection (d)(2), the record must be sent, communicated, or transmitted by the method specified in the other law; and

(3) the record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not

enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under Subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than this chapter to send, communicate, or transmit a record by first class mail may be varied by agreement to the extent permitted by the other law. (Bus. & Com. Code, Sec. 43.008.)

Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE. (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law. (Bus. & Com. Code, Sec. 43.009.)

Sec. 322.010. EFFECT OF CHANGE OR ERROR. (a) If a change

or error in an electronic record occurs in a transmission between parties to a transaction, the rules provided by this section apply.

(b) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(c) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(1) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(2) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(3) has not used or received any benefit or value from the consideration, if any, received from the other person.

(d) If neither Subsection (b) nor Subsection (c) applies, the change or error has the effect provided by other law, including

the law of mistake, and the parties' contract, if any.

(e) Subsections (c) and (d) may not be varied by agreement. (Bus. & Com. Code, Sec. 43.010.)

Sec. 322.011. NOTARIZATION AND ACKNOWLEDGMENT. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. (Bus. & Com. Code, Sec. 43.011.)

Sec. 322.012. RETENTION OF ELECTRONIC RECORDS; ORIGINALS. (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with Subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy Subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by

an electronic record retained in accordance with Subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with Subsection (a).

(f) A record retained as an electronic record in accordance with Subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after January 1, 2002, specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction. (Bus. & Com. Code, Sec. 43.012.)

Sec. 322.013. ADMISSIBILITY IN EVIDENCE. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form. (Bus. & Com. Code, Sec. 43.013.)

Sec. 322.014. AUTOMATED TRANSACTION. (a) In an automated transaction, the rules provided by this section apply.

(b) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(c) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to

refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(d) The terms of the contract are determined by the substantive law applicable to it. (Bus. & Com. Code, Sec. 43.014.)

Sec. 322.015. TIME AND PLACE OF SENDING AND RECEIPT. (a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between the sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that

system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under Subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) if the sender or the recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; and

(2) if the sender or the recipient does not have a place of business, the place of business is the sender's or the recipient's residence, as the case may be.

(e) An electronic record is received under Subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in Subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under Subsection (a), or purportedly received under Subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the

requirements of this subsection may not be varied by agreement. (Bus. & Com. Code, Sec. 43.015.)

Sec. 322.016. TRANSFERABLE RECORDS. (a) In this section, "transferable record" means an electronic record that:

(1) would be a note under Chapter 3, or a document under Chapter 7, if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and

maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 1.201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Section 3.302(a), 7.501, or 9.330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall

provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record. (Bus. & Com. Code, Sec. 43.016.)

Sec. 322.017. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES. (a) Except as otherwise provided by Section 322.012(f), each state agency shall determine whether, and the extent to which, the agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a state agency uses electronic records and electronic signatures under Subsection (a), the Department of Information Resources and Texas State Library and Archives Commission, pursuant to their rulemaking authority under other law and giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate

the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in Section 322.012(f), this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures. (Bus. & Com. Code, Sec. 43.017.)

Sec. 322.018. INTEROPERABILITY. The Department of Information Resources may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application. (Bus. & Com. Code, Sec. 43.018.)

Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL ELECTRONIC SIGNATURES ACT. This chapter modifies, limits, or supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002). (Bus. & Com. Code, Sec. 43.019.)

Sec. 322.020. APPLICABILITY OF PENAL CODE. This chapter does not authorize any activity that is prohibited by the Penal Code. (Bus. & Com. Code, Sec. 43.020.)

Sec. 322.021. CERTAIN REQUIREMENTS CONSIDERED TO BE RECOMMENDATIONS. Any requirement of the Department of Information Resources or the Texas State Library and Archives Commission under this chapter that generally applies to one or more state agencies using electronic records or electronic signatures is considered to be a recommendation to the comptroller concerning the electronic records or electronic signatures used by the comptroller. The comptroller may adopt or decline to adopt the recommendation. (Bus. & Com. Code, Sec. 43.021.)

CHAPTER 323. PROVISION OF SOFTWARE OR SERVICES TO BLOCK OR SCREEN INTERNET MATERIAL

Sec. 323.001. DEFINITIONS
Sec. 323.002. SOFTWARE OR SERVICES THAT RESTRICT ACCESS TO CERTAIN INTERNET MATERIAL
Sec. 323.003. CIVIL PENALTY

CHAPTER 323. PROVISION OF SOFTWARE OR SERVICES TO BLOCK OR SCREEN INTERNET MATERIAL

Sec. 323.001. DEFINITIONS. In this chapter:

(1) "Freeware" means software distributed to a person free of charge, regardless of whether use of the software is subject to certain restrictions.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Interactive computer service" means any

information service or system that provides or enables computer access to the Internet by multiple users.

(4) "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(5) "Shareware" means copyrighted software for which the copyright owner sets certain conditions for the software's distribution and use, including requiring payment to the copyright owner after a person who has secured a copy of the software decides to use the software, regardless of whether the payment is for additional support or functionality of the software. (Bus. & Com. Code, Secs. 35.101, 35.102(c) (part).)

Sec. 323.002. SOFTWARE OR SERVICES THAT RESTRICT ACCESS TO CERTAIN INTERNET MATERIAL. (a) This section does not apply to:

(1) the Department of Information Resources, in the department's capacity as the telecommunications provider for this state; or

(2) an institution of higher education that provides interactive computer service.

(b) A person who charges a fee to provide an interactive computer service shall provide free of charge to each subscriber of the service in this state a link leading to fully functional shareware, freeware, or a demonstration version of software or to a service that, for at least one operating system, enables the subscriber to automatically block or screen material on the Internet.

(c) A person who charges a fee to provide an interactive

computer service is in compliance with this section if the person places, on the person's first page of world wide web text information accessible to a subscriber, a link leading to the software or service described by Subsection (b). The identity of the link or other on-screen depiction of the link must appear set out from surrounding written or graphical material so as to be conspicuous.

(d) A person who provides a link that complies with this section is not liable to a subscriber for any temporary inoperability of the link or for the effectiveness of the software or service to which the person links. (Bus. & Com. Code, Secs. 35.102(a), (b), (c) (part), (d).)

Sec. 323.003. CIVIL PENALTY. (a) A person is liable to this state for a civil penalty of $2,000 for each day the person violates Section 323.002. The aggregate civil penalty may not exceed $60,000.

(b) The attorney general may bring an action against a person who violates Section 323.002 to recover the civil penalty. Before bringing the action, the attorney general shall give the person notice of the person's noncompliance and liability for a civil penalty. If the person complies with Section 323.002 not later than the 30th day after the date of the notice, the violation is cured and the person is not liable for the civil penalty. (Bus. & Com. Code, Sec. 35.103.)

CHAPTER 324. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324.001. SHORT TITLE

Sec. 324.002. DEFINITIONS

Sec. 324.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER

Sec. 324.004. CAUSING COMPUTER SOFTWARE TO BE COPIED

Sec. 324.005. KNOWING VIOLATION

Sec. 324.006. INTENTIONALLY DECEPTIVE MEANS

[Sections 324.007-324.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

Sec. 324.051. UNAUTHORIZED COLLECTION OR CULLING OF PERSONALLY IDENTIFIABLE INFORMATION

Sec. 324.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS OF COMPUTER SETTINGS; COMPUTER DAMAGE

Sec. 324.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION OR DISABLING OF COMPUTER SOFTWARE

Sec. 324.054. OTHER PROHIBITED CONDUCT

[Sections 324.055-324.100 reserved for expansion]

SUBCHAPTER C. CIVIL REMEDIES

Sec. 324.101. PRIVATE ACTION

Sec. 324.102. CIVIL PENALTY; INJUNCTIVE RELIEF

CHAPTER 324. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324.001. SHORT TITLE. This chapter may be cited as the Consumer Protection Against Computer Spyware Act. (Bus. & Com. Code, Sec. 48.001, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.002. DEFINITIONS. In this chapter:

(1) "Advertisement" means a communication that includes the promotion of a commercial product or service,

including communication on an Internet website operated for a commercial purpose.

(2) "Computer software" means a sequence of instructions written in a programming language that is executed on a computer. The term does not include:

(A) a web page; or

(B) a data component of a web page that cannot be executed independently of that page.

(3) "Damage," with respect to a computer, means significant impairment to the integrity or availability of data, computer software, a system, or information.

(4) "Execute," with respect to computer software, means to perform a function or carry out instructions.

(5) "Keystroke-logging function" means a function of a computer software program that:

(A) records all keystrokes made by a person using a computer; and

(B) transfers that information from the computer to another person.

(6) "Owner or operator of a computer" means the owner or lessee of a computer or an individual using a computer with the authorization of the owner or lessee of the computer. The phrase "owner of a computer," with respect to a computer sold at retail, does not include a person who owned the computer before the date on which the computer was sold.

(7) "Person" means an individual, partnership, corporation, limited liability company, or other organization, or a

combination of those organizations.

(8) "Personally identifiable information," with respect to an individual who is the owner or operator of a computer, means:

(A) a first name or first initial in combination with a last name;

(B) a home or other physical address, including street name;

(C) an electronic mail address;

(D) a credit or debit card number;

(E) a bank account number;

(F) a password or access code associated with a credit or debit card or bank account;

(G) a social security number, tax identification number, driver's license number, passport number, or other government-issued identification number; or

(H) any of the following information if the information alone or in combination with other information personally identifies the individual:

(i) account balances;

(ii) overdraft history; or

(iii) payment history. (Bus. & Com. Code, Secs. 48.002(1), (3), (4), (5), (6), (7), (8), (9), as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER. (a) Section 324.052, other than Subdivision (1) of that section, and Sections 324.053(4) and 324.054 do not apply to a

telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service that monitors or has interaction with a subscriber's Internet or other network connection or service or a protected computer for:

(1) a network or computer security purpose;

(2) diagnostics, technical support, or a repair purpose;

(3) an authorized update of computer software or system firmware;

(4) authorized remote system management; or

(5) detection or prevention of unauthorized use of or fraudulent or other illegal activity in connection with a network, service, or computer software, including scanning for and removing software proscribed under this chapter.

(b) This chapter does not apply to:

(1) the use of a navigation device, any interaction with a navigation device, or the installation or use of computer software on a navigation device by a multichannel video programming distributor, as defined by 47 U.S.C. Section 522(13), or video programmer in connection with the provision of multichannel video programming or other services offered over a multichannel video programming system if the provision of the programming or other service is subject to 47 U.S.C. Section 338(i) or 551; or

(2) the collection or disclosure of subscriber information by a multichannel video programming distributor, as defined by 47 U.S.C. Section 522(13), or video programmer in

connection with the provision of multichannel video programming or other services offered over a multichannel video programming system if the collection or disclosure of the information is subject to 47 U.S.C. Section 338(i) or 551. (Bus. & Com. Code, Sec. 48.003, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.004. CAUSING COMPUTER SOFTWARE TO BE COPIED. For purposes of this chapter, a person causes computer software to be copied if the person distributes or transfers computer software or a component of computer software. Causing computer software to be copied does not include:

(1) transmitting or routing computer software or a component of the software;

(2) providing intermediate temporary storage or caching of software;

(3) providing a storage medium such as a compact disk;

(4) a website;

(5) the distribution of computer software by a third party through a computer server; or

(6) providing an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of a computer is able to locate computer software. (Bus. & Com. Code, Sec. 48.002(2), as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.005. KNOWING VIOLATION. A person knowingly violates Section 324.051, 324.052, or 324.053 if the person:

(1) acts with actual knowledge of the facts that constitute the violation; or

(2) consciously avoids information that would establish actual knowledge of those facts. (Bus. & Com. Code, Sec. 48.054, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.006. INTENTIONALLY DECEPTIVE MEANS. For purposes of this chapter, a person is considered to have acted through intentionally deceptive means if the person, with the intent to deceive the owner or operator of a computer:

(1) intentionally makes a materially false or fraudulent statement;

(2) intentionally makes a statement or uses a description that omits or misrepresents material information; or

(3) intentionally and materially fails to provide to the owner or operator any notice regarding the installation or execution of computer software. (Bus. & Com. Code, Sec. 48.056, as added Acts 79th Leg., R.S., Ch. 298.)

[Sections 324.007-324.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

Sec. 324.051. UNAUTHORIZED COLLECTION OR CULLING OF PERSONALLY IDENTIFIABLE INFORMATION. A person other than the owner or operator of the computer may not knowingly cause computer software to be copied to a computer in this state and use the software to:

(1) collect personally identifiable information through intentionally deceptive means:

(A) by using a keystroke-logging function; or

(B) in a manner that correlates that information with information regarding all or substantially all of the websites

visited by the owner or operator of the computer, other than websites operated by the person collecting the information; or

(2) cull, through intentionally deceptive means, the following kinds of personally identifiable information from the consumer's computer hard drive for a purpose wholly unrelated to any of the purposes of the software or service described to an owner or operator of the computer:

(A) a credit or debit card number;

(B) a bank account number;

(C) a password or access code associated with a credit or debit card number or a bank account;

(D) a social security number;

(E) account balances; or

(F) overdraft history. (Bus. & Com. Code, Sec. 48.051, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS OF COMPUTER SETTINGS; COMPUTER DAMAGE. A person other than the owner or operator of the computer may not knowingly cause computer software to be copied to a computer in this state and use the software to:

(1) modify, through intentionally deceptive means, a setting that controls:

(A) the page that appears when an Internet browser or a similar software program is launched to access and navigate the Internet;

(B) the default provider or web proxy used to access or search the Internet; or

(C) a list of bookmarks used to access web pages;

(2) take control of the computer by:

(A) accessing or using the computer's modem or Internet service to:

(i) cause damage to the computer;

(ii) cause the owner or operator of the computer to incur financial charges for a service the owner or operator did not previously authorize; or

(iii) cause a third party affected by the conduct to incur financial charges for a service the third party did not previously authorize; or

(B) opening, without the consent of the owner or operator of the computer, an advertisement that:

(i) is in the owner's or operator's Internet browser in a multiple, sequential, or stand-alone form; and

(ii) cannot be closed by an ordinarily reasonable person using the computer without closing the browser or shutting down the computer;

(3) modify settings on the computer that relate to access to or use of the Internet and protection of information for purposes of stealing personally identifiable information of the owner or operator of the computer; or

(4) modify security settings on the computer relating to access to or use of the Internet for purposes of causing damage to one or more computers. (Bus. & Com. Code, Sec. 48.052, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION

OR DISABLING OF COMPUTER SOFTWARE. A person other than the owner or operator of the computer may not knowingly cause computer software to be copied to a computer in this state and use the software to:

(1) prevent, through intentionally deceptive means, reasonable efforts of the owner or operator of the computer to block the installation or execution of or to disable computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer;

(2) intentionally misrepresent to another that computer software will be uninstalled or disabled by the actions of the owner or operator of the computer;

(3) remove, disable, or render inoperative, through intentionally deceptive means, security, antispyware, or antivirus computer software installed on the computer;

(4) prevent reasonable efforts of the owner or operator to block the installation of or to disable computer software by:

(A) presenting the owner or operator with an option to decline the installation of software knowing that, when the option is selected, the installation process will continue to proceed; or

(B) misrepresenting that software has been disabled;

(5) change the name, location, or other designation of computer software to prevent the owner from locating and removing the software; or

(6) create randomized or intentionally deceptive file names or random or intentionally deceptive directory folders, formats, or registry entries to avoid detection and prevent the owner from removing computer software. (Bus. & Com. Code, Sec. 48.053, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.054. OTHER PROHIBITED CONDUCT. A person other than the owner or operator of the computer may not:

(1) induce the owner or operator of a computer in this state to install a computer software component to the computer by intentionally misrepresenting the extent to which the installation is necessary:

(A) for security or privacy reasons;

(B) to open or view text; or

(C) to play a particular type of musical or other content; or

(2) copy and execute or cause the copying and execution of a computer software component to a computer in this state in a deceptive manner with the intent to cause the owner or operator of the computer to use the component in a manner that violates this chapter. (Bus. & Com. Code, Sec. 48.055, as added Acts 79th Leg., R.S., Ch. 298.)

[Sections 324.055-324.100 reserved for expansion]

SUBCHAPTER C. CIVIL REMEDIES

Sec. 324.101. PRIVATE ACTION. (a) Any of the following persons, if adversely affected by the violation, may bring a civil action against a person who violates this chapter:

(1) a provider of computer software;

(2) an owner of a web page or trademark;

(3) a telecommunications carrier;

(4) a cable operator; or

(5) an Internet service provider.

(b) Each separate violation of this chapter is an actionable violation.

(c) In addition to any other remedy provided by law and except as provided by Subsection (g), a person who brings an action under this section may obtain:

(1) injunctive relief that restrains the violator from continuing the violation;

(2) subject to Subsection (d), damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) $100,000 for each violation of the same nature; or

(3) both injunctive relief and damages.

(d) The court may increase the amount of an award of actual damages in an action brought under Subsection (c) to an amount not to exceed three times the amount of actual damages sustained if the court finds that the violation has reoccurred with sufficient frequency to constitute a pattern or practice.

(e) A plaintiff who prevails in an action brought under Subsection (c) is entitled to recover reasonable attorney's fees and court costs.

(f) For purposes of Subsection (c), violations are of the

same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred.

(g) If a violation of Section 324.052 causes a telecommunications carrier or cable operator to incur costs for the origination, transport, or termination of a call triggered using the modem of a customer of the telecommunications carrier or cable operator as a result of the violation, the telecommunications carrier or cable operator may in addition to any other remedy provided by law:

(1) apply to a court for an order to enjoin the violation;

(2) recover the charges the telecommunications carrier or cable operator is obligated to pay to a telecommunications carrier, a cable operator, another provider of transmission capability, or an information service provider as a result of the violation, including charges for the origination, transport, or termination of the call;

(3) recover the costs of handling customer inquiries or complaints with respect to amounts billed for calls as a result of the violation;

(4) recover other costs, including court costs, and reasonable attorney's fees; or

(5) both apply for injunctive relief and recover charges and other costs as provided by this subsection. (Bus. & Com. Code, Sec. 48.101, as added Acts 79th Leg., R.S., Ch. 298.)

Sec. 324.102. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A

person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed $100,000 for each violation. The attorney general may bring an action to recover the civil penalty imposed by this subsection.

(b) If it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, the attorney general may bring an action in the name of the state against the person to restrain the violation by a temporary restraining order or by a permanent or temporary injunction.

(c) The attorney general is entitled to recover reasonable expenses incurred in obtaining civil penalties or injunctive relief, or both, under this section, including reasonable attorney's fees and court costs. (Bus. & Com. Code, Sec. 48.102, as added Acts 79th Leg., R.S., Ch. 298.)

CHAPTER 325. INTERNET FRAUD

Sec. 325.001. SHORT TITLE
Sec. 325.002. DEFINITIONS
Sec. 325.003. INAPPLICABILITY OF CHAPTER
Sec. 325.004. CREATION AND USE OF WEB PAGE OR DOMAIN NAME FOR FRAUDULENT PURPOSE PROHIBITED
Sec. 325.005. TRANSMISSION OF FRAUDULENT ELECTRONIC MAIL PROHIBITED
Sec. 325.006. CIVIL ACTION FOR INJUNCTIVE RELIEF OR DAMAGES

CHAPTER 325. INTERNET FRAUD

Sec. 325.001. SHORT TITLE. This chapter may be cited as the

Anti-Phishing Act. (Bus. & Com. Code, Sec. 48.001, as added Acts 79th Leg., R.S., Ch. 544.)

Sec. 325.002. DEFINITIONS. In this chapter:

(1) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen the message, file, or information.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(3) "Identifying information" has the meaning assigned by Section 32.51, Penal Code.

(4) "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service that is:

(A) assigned through a centralized Internet naming authority; and

(B) composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

(5) "Web page" means:

(A) a location that has a single uniform resource locator with respect to the world wide web; or

(B) another location that can be accessed on the Internet. (Bus. & Com. Code, Sec. 48.002, as added Acts 79th Leg.,

R.S., Ch. 544.)

Sec. 325.003. INAPPLICABILITY OF CHAPTER. This chapter does not apply to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information. (Bus. & Com. Code, Sec. 48.006, as added Acts 79th Leg., R.S., Ch. 544.)

Sec. 325.004. CREATION AND USE OF WEB PAGE OR DOMAIN NAME FOR FRAUDULENT PURPOSE PROHIBITED. A person may not, with the intent to engage in conduct involving the fraudulent use or possession of identifying information of another person:

(1) create a web page or Internet domain name that is represented as a legitimate online business without the authorization of the registered owner of that business; and

(2) use that web page or a link to that web page, that domain name, or another site on the Internet to induce, request, or solicit another person to provide identifying information for a purpose that the other person believes is legitimate. (Bus. & Com. Code, Sec. 48.003, as added Acts 79th Leg., R.S., Ch. 544.)

Sec. 325.005. TRANSMISSION OF FRAUDULENT ELECTRONIC MAIL PROHIBITED. A person may not, with the intent to engage in conduct involving the fraudulent use or possession of identifying information, send or cause to be sent to an electronic mail address held by a resident of this state an electronic mail message that:

(1) is falsely represented as being sent by a legitimate online business;

(2) refers or links the recipient to a web page that is

represented as being associated with the legitimate online business; and

(3) directly or indirectly induces, requests, or solicits the recipient to provide identifying information for a purpose that the recipient believes is legitimate. (Bus. & Com. Code, Sec. 48.004, as added Acts 79th Leg., R.S., Ch. 544.)

Sec. 325.006. CIVIL ACTION FOR INJUNCTIVE RELIEF OR DAMAGES. (a) Any of the following persons may bring a civil action against a person who violates this chapter:

(1) a person who is engaged in the business of providing Internet access service to the public and is adversely affected by the violation;

(2) an owner of a web page or trademark who is adversely affected by the violation; or

(3) the attorney general.

(b) A person who brings an action under this section may obtain:

(1) injunctive relief that restrains the violator from continuing the violation;

(2) subject to Subsection (c), damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) $100,000 for each violation of the same nature; or

(3) both injunctive relief and damages.

(c) The court may increase the amount of an award of actual damages in an action brought under this section to an amount not to

exceed three times the actual damages sustained if the court finds that the violation has reoccurred with sufficient frequency to constitute a pattern or practice.

(d) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable attorney's fees and court costs.

(e) For purposes of this section, violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred. (Bus. & Com. Code, Sec. 48.005, as added Acts 79th Leg., R.S., Ch. 544.)

TITLE 11. PERSONAL IDENTITY INFORMATION

SUBTITLE A. IDENTIFYING INFORMATION

CHAPTER 501. PROTECTION OF DRIVER'S LICENSE AND SOCIAL SECURITY NUMBERS

SUBCHAPTER A. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

Sec. 501.001. CERTAIN USES OF SOCIAL SECURITY NUMBER PROHIBITED

Sec. 501.002. CERTAIN USES OF SOCIAL SECURITY NUMBER PROHIBITED; REMEDIES

[Sections 501.003-501.050 reserved for expansion]

SUBCHAPTER B. PRIVACY POLICY TO PROTECT SOCIAL SECURITY NUMBERS

Sec. 501.051. INAPPLICABILITY OF SUBCHAPTER

Sec. 501.052. PRIVACY POLICY NECESSARY TO REQUIRE DISCLOSURE OF SOCIAL SECURITY NUMBER

Sec. 501.053. CIVIL PENALTY; INJUNCTION

[Sections 501.054-501.100 reserved for expansion]

SUBCHAPTER C. OTHER RESTRICTIONS TO PROTECT DRIVER'S LICENSE AND SOCIAL SECURITY NUMBERS

Sec. 501.101. USE OF CONSUMER DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER BY MERCHANT OR CERTAIN THIRD PARTY

Sec. 501.102. CIVIL PENALTY; INJUNCTION

CHAPTER 501. PROTECTION OF DRIVER'S LICENSE AND SOCIAL SECURITY NUMBERS

SUBCHAPTER A. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

Sec. 501.001. CERTAIN USES OF SOCIAL SECURITY NUMBER PROHIBITED. (a) A person, other than a government or a governmental subdivision or agency, may not:

(1) intentionally communicate or otherwise make available to the public an individual's social security number;

(2) display an individual's social security number on a card or other device required to access a product or service provided by the person;

(3) require an individual to transmit the individual's social security number over the Internet unless:

(1) the Internet connection is secure; or

(2) the social security number is encrypted;

(4) require an individual's social security number for access to an Internet website unless a password or unique personal identification number or other authentication device is also required for access; or

(5) except as provided by Subsection (f), print an individual's social security number on any material sent by mail,

unless state or federal law requires that social security number to be included in the material.

(b) A person using an individual's social security number before January 1, 2005, in a manner prohibited by Subsection (a) may continue that use if:

(1) the use is continuous; and

(2) beginning January 1, 2006, the person provides to the individual an annual disclosure stating that, on written request from the individual, the person will stop using the individual's social security number in a manner prohibited by Subsection (a).

(c) A person, other than a government or a governmental subdivision or agency, may not deny a service to an individual because the individual makes a written request under Subsection (b)(2).

(d) If a person receives a written request from an individual directing the person to stop using the individual's social security number in a manner prohibited by Subsection (a), the person shall comply with the request not later than the 30th day after the date the request is received. The person may not impose a fee for complying with the request.

(e) This section does not apply to:

(1) the collection, use, or release of a social security number required by state or federal law, including Chapter 552, Government Code;

(2) the use of a social security number for internal verification or administrative purposes;

(3) a document that is recorded or required to be open to the public under Chapter 552, Government Code;

(4) a court record; or

(5) an institution of higher education if the use of a social security number by the institution is regulated by Chapter 51, Education Code, or another provision of the Education Code.

(f) Subsection (a)(5) does not apply to an application or form sent by mail, including a document sent:

(1) as part of an application or enrollment process;

(2) to establish, amend, or terminate an account, contract, or policy; or

(3) to confirm the accuracy of a social security number. (Bus. & Com. Code, Sec. 35.58, as added Acts 78th Leg., R.S., Ch. 1326.)

Sec. 501.002. CERTAIN USES OF SOCIAL SECURITY NUMBER PROHIBITED; REMEDIES. (a) A person may not print an individual's social security number on a card or other device required to access a product or service provided by the person unless the individual has requested in writing that printing. The person may not require a request for that printing as a condition of receipt of or access to a product or service provided by the person.

(b) A person who violates this section is liable to this state for a civil penalty in an amount not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section.

(c) The attorney general may bring an action in the name of

the state to restrain or enjoin a person from violating this section.

(d) This section does not apply to:

(1) the collection, use, or release of a social security number required by state or federal law, including Chapter 552, Government Code; or

(2) the use of a social security number for internal verification or administrative purposes.

(e) This section applies to a card or other device issued in connection with an insurance policy only if the policy is delivered, issued for delivery, or renewed on or after March 1, 2005. (Acts 78th Leg., R.S., Ch. 341, Sec. 2(b) (part); Bus. & Com. Code, Sec. 35.58, as added Acts 78th Leg., R.S., Ch. 341.)

[Sections 501.003-501.050 reserved for expansion]

SUBCHAPTER B. PRIVACY POLICY TO PROTECT SOCIAL SECURITY NUMBERS

Sec. 501.051. INAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) a person who is required to maintain and disseminate a privacy policy under:

(A) the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809);

(B) the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g); or

(C) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);

(2) a covered entity under rules adopted by the commissioner of insurance relating to insurance consumer health

information privacy or insurance consumer financial information privacy;

(3) a governmental body, as defined by Section 552.003, Government Code, other than a municipally owned utility; or

(4) a person with respect to a loan transaction, if the person is not engaged in the business of making loans. (Bus. & Com. Code, Sec. 35.581(c), as added Acts 79th Leg., R.S., Ch. 198.)

Sec. 501.052. PRIVACY POLICY NECESSARY TO REQUIRE DISCLOSURE OF SOCIAL SECURITY NUMBER. (a) A person may not require an individual to disclose the individual's social security number to obtain goods or services from or enter into a business transaction with the person unless the person:

(1) adopts a privacy policy as provided by Subsection (b);

(2) makes the privacy policy available to the individual; and

(3) maintains under the privacy policy the confidentiality and security of the social security number disclosed to the person.

(b) A privacy policy adopted under this section must include:

(1) how personal information is collected;

(2) how and when the personal information is used;

(3) how the personal information is protected;

(4) who has access to the personal information; and

(5) the method of disposal of the personal

information. (Bus. & Com. Code, Secs. 35.581(a), (b), as added Acts 79th Leg., R.S., Ch. 198.)

Sec. 501.053. CIVIL PENALTY; INJUNCTION. (a) A person who violates Section 501.052(a) is liable to this state for a civil penalty in an amount not to exceed $500 for each calendar month during which a violation occurs. The civil penalty may not be imposed for more than one violation that occurs in a month. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section.

(b) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating Section 501.052(a). (Bus. & Com. Code, Secs. 35.581(d), (e), as added Acts 79th Leg., R.S., Ch. 198.)

[Sections 501.054-501.100 reserved for expansion]

SUBCHAPTER C. OTHER RESTRICTIONS TO PROTECT DRIVER'S LICENSE AND SOCIAL SECURITY NUMBERS

Sec. 501.101. USE OF CONSUMER DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER BY MERCHANT OR CERTAIN THIRD PARTY. (a) A merchant or a third party under contract with a merchant who requires a consumer returning merchandise to provide the consumer's driver's license or social security number may use the number or numbers provided by the consumer solely for identification purposes if the consumer does not have a valid receipt for the item being returned and is seeking a cash, credit, or store credit refund.

(b) A merchant or a third party under contract with a merchant may not disclose a consumer's driver's license or social

security number to any other third party, including a merchant, not involved in the initial transaction.

(c) A merchant or a third party under contract with a merchant may use a consumer's driver's license or social security number only to monitor, investigate, or prosecute fraudulent return of merchandise.

(d) A merchant or a third party under contract with a merchant shall destroy or arrange for the destruction of records containing the consumer's driver's license or social security number at the expiration of six months from the date of the last transaction. (Bus. & Com. Code, Secs. 35.581(a), (b), (c), (d), as added Acts 79th Leg., R.S., Ch. 946.)

Sec. 501.102. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter is liable to this state for a civil penalty in an amount not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section.

(b) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating this subchapter. (Bus. & Com. Code, Secs. 35.581(e), (f), as added Acts 79th Leg., R.S., Ch. 946.)

CHAPTER 502. PROTECTION OF IDENTIFYING FINANCIAL INFORMATION

Sec. 502.001. WARNING SIGN ABOUT IDENTITY THEFT FOR RESTAURANT OR BAR EMPLOYEES

Sec. 502.002. BUSINESS RECEIPT CONTAINING CREDIT CARD OR DEBIT CARD INFORMATION

Sec. 502.003. DELIVERY OF CHECK FORM

CHAPTER 502. PROTECTION OF IDENTIFYING FINANCIAL INFORMATION

Sec. 502.001. WARNING SIGN ABOUT IDENTITY THEFT FOR RESTAURANT OR BAR EMPLOYEES. (a) In this section:

(1) "Credit card" means an identification card, plate, coupon, book, or number or any other device authorizing a designated person or bearer to obtain property or service on credit.

(2) "Debit card" means an identification card, plate, coupon, book, or number or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal or to obtain property or services by debit to an account at a financial institution.

(b) This section applies only to a restaurant or bar that accepts credit cards or debit cards from customers in the ordinary course of business.

(c) A restaurant or bar owner shall display in a prominent place on the premises of the restaurant or bar a sign stating in letters at least one-half inch high: "UNDER SECTION 32.51, PENAL CODE, IT IS A STATE JAIL FELONY (PUNISHABLE BY CONFINEMENT IN A STATE JAIL FOR NOT MORE THAN TWO YEARS) TO OBTAIN, POSSESS, TRANSFER, OR USE A CUSTOMER'S DEBIT CARD OR CREDIT CARD NUMBER WITHOUT THE CUSTOMER'S CONSENT."

(d) The restaurant or bar owner shall display the sign in English and in another language spoken by a substantial portion of the employees of the restaurant or bar as their familiar language.

(e) A restaurant or bar owner who fails to comply with this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $25.

(f) It is a defense to prosecution under Subsection (e) that the restaurant or bar owner charged with the offense produces to the court satisfactory evidence that the person displayed the sign required by Subsection (c) not later than 48 hours after the person received a citation for an offense under Subsection (e). If the court is satisfied with the evidence produced by the person, the court shall dismiss the charge. (Bus. & Com. Code, Sec. 35.60.)

Sec. 502.002. BUSINESS RECEIPT CONTAINING CREDIT CARD OR DEBIT CARD INFORMATION. (a) A person who accepts a credit card or debit card for the transaction of business may not print on a receipt or other document that evidences the transaction and is provided to a cardholder more than the last four digits of the credit card or debit card account number or the month and year that the credit card or debit card expires.

(b) This section does not apply to a transaction in which the sole means of recording a person's credit card or debit card account number on a receipt or other document evidencing the transaction is by handwriting or an imprint or copy of the credit card or debit card.

(c) A person who provides, leases, or sells a cash register or other machine used to print a receipt or other document evidencing a credit card or debit card transaction shall provide notice of the requirements of this section to the recipient, lessee, or buyer, as applicable, of the machine.

(d) A person who violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed $500 for each calendar month in which a violation occurs. The civil penalty may not be imposed for more than one violation that occurs in a month. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section.

(e) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating Subsection (a).

(f) A court may not certify an action brought under this section as a class action. (Bus. & Com. Code, Sec. 35.61.)

Sec. 502.003. DELIVERY OF CHECK FORM. (a) In this section:

(1) "Addressee" means a person to whom a check form is sent.

(2) "Check form" means a device for the transmission or payment of money that:

(A) is not a negotiable instrument under Section 3.104;

(B) if completed would be a check as defined by Section 3.104; and

(C) is printed with information relating to the financial institution on which the completed check may be drawn.

(3) "Check form provider" means a business that provides check forms to a customer for a personal or business account.

(4) "Courier" means an entity that delivers parcels

for a fee.

(b) If an addressee requests that a check form provider employ courier delivery of a check form with signature required, and that service is available in the delivery area of the addressee, the entity arranging for courier delivery in compliance with the addressee's request must provide the addressee with the option to require that the signature of the addressee, or the representative of the addressee, be obtained on delivery.

(c) The option under Subsection (b) to require the signature of the addressee or representative may be provided:

(1) on a printed check form order form;

(2) on an electronic check form order form where check form orders are offered on the Internet;

(3) by electronic mail to an address established for that purpose by the entity making the offer; or

(4) by another method reasonably designed to effectively communicate the addressee's intent.

(d) An entity that arranges for the courier delivery of a check form to an addressee as requested under Subsection (b) shall notify the courier of the check form that the signature of the addressee or a representative of the addressee is required for delivery under that subsection.

(e) If the addressee suffers a pecuniary loss because of the use of a check form stolen at the time of delivery to the addressee, a civil penalty of not more than $1,000 for each delivery may be imposed on:

(1) an entity that violates Subsection (b), (c), or

(d); or

(2) a courier that:

(A) is properly notified under Subsection (d) that a signature is required for delivery; and

(B) delivers the check form without obtaining the signature of the addressee or a representative of the addressee.

(f) The attorney general may bring an action to recover a civil penalty imposed under Subsection (e). The attorney general may recover reasonable expenses incurred in obtaining the civil penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses. (Bus. & Com. Code, Sec. 35.395.)

CHAPTER 503. BIOMETRIC IDENTIFIERS

Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER

CHAPTER 503. BIOMETRIC IDENTIFIERS

Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER. (a) In this section, "biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(b) A person may not capture a biometric identifier of an individual for a commercial purpose unless the person:

(1) informs the individual before capturing the biometric identifier; and

(2) receives the individual's consent to capture the biometric identifier.

(c) A person who possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the

biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure completes a financial transaction that the individual requested or authorized;

(C) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552, Government Code; or

(D) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the person stores, transmits, and protects any other confidential information the person possesses.

(d) A person who violates this section is subject to a civil penalty of not more than $25,000 for each violation. The attorney general may bring an action to recover the civil penalty. (Bus. & Com. Code, Sec. 35.50.)

CHAPTER 504. PROHIBITED USE OF CRIME VICTIM OR MOTOR VEHICLE ACCIDENT INFORMATION

Sec. 504.001. DEFINITIONS

Sec. 504.002. PROHIBITION ON USE FOR SOLICITATION OR SALE OF INFORMATION

CHAPTER 504. PROHIBITED USE OF CRIME VICTIM OR MOTOR VEHICLE ACCIDENT INFORMATION

Sec. 504.001. DEFINITIONS. In this chapter:

(1) "Crime victim information" means information

that:

(A) is collected or prepared by a law enforcement agency; and

(B) identifies or serves to identify a person who, according to a record of the agency, may have been the victim of a crime in which:

(i) physical injury to the person occurred or was attempted; or

(ii) the offender entered or attempted to enter the dwelling of the person.

(2) "Motor vehicle accident information" means information that:

(A) is collected or prepared by a law enforcement agency; and

(B) identifies or serves to identify a person who, according to a record of the agency, may have been involved in a motor vehicle accident. (Bus. & Com. Code, Sec. 35.54(a).)

Sec. 504.002. PROHIBITION ON USE FOR SOLICITATION OR SALE OF INFORMATION. (a) A person who possesses crime victim or motor vehicle accident information that the person obtained or knows was obtained from a law enforcement agency may not:

(1) use the information to contact directly any of the following persons for the purpose of soliciting business from the person:

(A) a crime victim;

(B) a person who was involved in a motor vehicle accident; or

(C) a member of the family of a person described by Paragraph (A) or (B); or

(2) sell the information to another person for financial gain.

(b) The attorney general may bring an action against a person who violates Subsection (a) pursuant to Section 17.47.

(c) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor unless the defendant has been previously convicted under this section three or more times, in which event the offense is a felony of the third degree. (Bus. & Com. Code, Secs. 35.54(b), (c), (d).)

[Chapters 505-520 reserved for expansion]

SUBTITLE B. IDENTITY THEFT

CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.001. SHORT TITLE

Sec. 521.002. DEFINITIONS

[Sections 521.003-521.050 reserved for expansion]

SUBCHAPTER B. IDENTITY THEFT

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Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL INFORMATION

Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA

[Sections 521.054-521.100 reserved for expansion]

SUBCHAPTER C. COURT ORDER DECLARING INDIVIDUAL A VICTIM OF IDENTITY THEFT

Sec. 521.101. APPLICATION FOR COURT ORDER TO DECLARE INDIVIDUAL A VICTIM OF IDENTITY THEFT

Sec. 521.102. PRESUMPTION OF APPLICANT'S STATUS AS VICTIM

Sec. 521.103. ISSUANCE OF ORDER; CONTENTS

Sec. 521.104. CONFIDENTIALITY OF ORDER

Sec. 521.105. GROUNDS FOR VACATING ORDER

[Sections 521.106-521.150 reserved for expansion]

SUBCHAPTER D. REMEDIES

Sec. 521.151. CIVIL PENALTY; INJUNCTION

Sec. 521.152. DECEPTIVE TRADE PRACTICE

CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.001. SHORT TITLE. This chapter may be cited as the Identity Theft Enforcement and Protection Act. (Bus. & Com. Code, Sec. 48.001, as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.002. DEFINITIONS. (a) In this chapter:

(1) "Personal identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual's:

(A) name, social security number, date of birth, or government-issued identification number;

(B) mother's maiden name;

(C) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(D) unique electronic identification number, address, or routing code; and

(E) telecommunication access device as defined by Section 32.51, Penal Code.

(2) "Sensitive personal information" means, subject to Subsection (b), an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

(A) social security number;

(B) driver's license number or government-issued identification number; or

(C) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(3) "Victim" means a person whose identifying information is used by an unauthorized person.

(b) For purposes of this chapter, the term "sensitive personal information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government. (Bus. & Com. Code, Sec. 48.002, as added Acts 79th Leg., R.S., Ch. 294.)

[Sections 521.003-521.050 reserved for expansion]

SUBCHAPTER B. IDENTITY THEFT

Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF PERSONAL IDENTIFYING INFORMATION. (a) A person may not obtain, possess, transfer, or use personal identifying information of another person

without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

(b) It is a defense to an action brought under this section that an act by a person:

(1) is covered by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.); and

(2) is in compliance with that Act and regulations adopted under that Act.

(c) This section does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code. (Bus. & Com. Code, Sec. 48.101, as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL INFORMATION. (a) A business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.

(b) A business shall destroy or arrange for the destruction of customer records containing sensitive personal information within the business's custody or control that are not to be retained by the business by:

(1) shredding;

(2) erasing; or

(3) otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means.

(c) This section does not apply to a financial institution as defined by 15 U.S.C. Section 6809. (Bus. & Com. Code, Sec. 48.102, as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA. (a) In this section, "breach of system security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner.

(b) A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any resident of this state whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(c) Any person who maintains computerized data that includes sensitive personal information not owned by the person

shall notify the owner or license holder of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(d) A person may delay providing notice as required by Subsection (b) or (c) at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law enforcement agency determines that the notification will not compromise the investigation.

(e) A person may give notice as required by Subsection (b) or (c) by providing:

(1) written notice;

(2) electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001; or

(3) notice as provided by Subsection (f).

(f) If the person required to give notice under Subsection (b) or (c) demonstrates that the cost of providing notice would exceed $250,000, the number of affected persons exceeds 500,000, or the person does not have sufficient contact information, the notice may be given by:

(1) electronic mail, if the person has electronic mail addresses for the affected persons;

(2) conspicuous posting of the notice on the person's website; or

(3) notice published in or broadcast on major statewide media.

(g) Notwithstanding Subsection (e), a person who maintains the person's own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under this section complies with this section if the person notifies affected persons in accordance with that policy.

(h) If a person is required by this section to notify at one time more than 10,000 persons of a breach of system security, the person shall also notify each consumer reporting agency, as defined by 15 U.S.C. Section 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The person shall provide the notice required by this subsection without unreasonable delay. (Bus. & Com. Code, Sec. 48.103, as added Acts 79th Leg., R.S., Ch. 294.)

[Sections 521.054-521.100 reserved for expansion]

SUBCHAPTER C. COURT ORDER DECLARING INDIVIDUAL A VICTIM OF IDENTITY THEFT

Sec. 521.101. APPLICATION FOR COURT ORDER TO DECLARE INDIVIDUAL A VICTIM OF IDENTITY THEFT. (a) A person who is injured by a violation of Section 521.051 or who has filed a criminal complaint alleging commission of an offense under Section 32.51, Penal Code, may file an application with a district court for the issuance of an order declaring that the person is a victim of identity theft.

(b) A person may file an application under this section regardless of whether the person is able to identify each person who allegedly transferred or used the person's identifying information

in an unlawful manner. (Bus. & Com. Code, Sec. 48.202(a), as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.102. PRESUMPTION OF APPLICANT'S STATUS AS VICTIM. An applicant under Section 521.101 is presumed to be a victim of identity theft under this subchapter if the person charged with an offense under Section 32.51, Penal Code, is convicted of the offense. (Bus. & Com. Code, Sec. 48.202(b), as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.103. ISSUANCE OF ORDER; CONTENTS. (a) After notice and hearing, if the court is satisfied by a preponderance of the evidence that an applicant under Section 521.101 has been injured by a violation of Section 521.051 or is the victim of an offense under Section 32.51, Penal Code, the court shall enter an order declaring that the applicant is a victim of identity theft resulting from a violation of Section 521.051 or an offense under Section 32.51, Penal Code, as appropriate.

(b) An order under this section must contain:

(1) any known information identifying the violator or person charged with the offense;

(2) the specific personal identifying information and any related document used to commit the alleged violation or offense; and

(3) information identifying any financial account or transaction affected by the alleged violation or offense, including:

(A) the name of the financial institution in which the account is established or of the merchant involved in the

transaction, as appropriate;

(B) any relevant account numbers;

(C) the dollar amount of the account or transaction affected by the alleged violation or offense; and

(D) the date of the alleged violation or offense. (Bus. & Com. Code, Sec. 48.202(c), as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.104. CONFIDENTIALITY OF ORDER. (a) An order issued under Section 521.103 must be sealed because of the confidential nature of the information required to be included in the order. The order may be opened and the order or a copy of the order may be released only:

(1) to the proper officials in a civil proceeding brought by or against the victim arising or resulting from a violation of this chapter, including a proceeding to set aside a judgment obtained against the victim;

(2) to the victim for the purpose of submitting the copy of the order to a governmental entity or private business to:

(A) prove that a financial transaction or account of the victim was directly affected by a violation of this chapter or the commission of an offense under Section 32.51, Penal Code; or

(B) correct any record of the entity or business that contains inaccurate or false information as a result of the violation or offense;

(3) on order of the judge; or

(4) as otherwise required or provided by law.

(b) A copy of an order provided to a person under Subsection

(a)(1) must remain sealed throughout and after the civil proceeding.

(c) Information contained in a copy of an order provided to a governmental entity or business under Subsection (a)(2) is confidential and may not be released to another person except as otherwise required or provided by law. (Bus. & Com. Code, Secs. 48.202(d), (f), as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.105. GROUNDS FOR VACATING ORDER. A court at any time may vacate an order issued under Section 521.103 if the court finds that the application filed under Section 521.101 or any information submitted to the court by the applicant contains a fraudulent misrepresentation or a material misrepresentation of fact. (Bus. & Com. Code, Sec. 48.202(e), as added Acts 79th Leg., R.S., Ch. 294.)

[Sections 521.106-521.150 reserved for expansion]

SUBCHAPTER D. REMEDIES

Sec. 521.151. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter is liable to this state for a civil penalty of at least $2,000 but not more than $50,000 for each violation. The attorney general may bring an action to recover the civil penalty imposed under this subsection.

(b) If it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, the attorney general may bring an action in the name of the state against the person to restrain the violation by a temporary restraining order or by a permanent or temporary injunction.

(c) An action brought under Subsection (b) must be filed in a district court in Travis County or:

(1) in any county in which the violation occurred; or

(2) in the county in which the victim resides, regardless of whether the alleged violator has resided, worked, or transacted business in the county in which the victim resides.

(d) The attorney general is not required to give a bond in an action under this section.

(e) In an action under this section, the court may grant any other equitable relief that the court considers appropriate to:

(1) prevent any additional harm to a victim of identity theft or a further violation of this chapter; or

(2) satisfy any judgment entered against the defendant, including issuing an order to appoint a receiver, sequester assets, correct a public or private record, or prevent the dissipation of a victim's assets.

(f) The attorney general is entitled to recover reasonable expenses, including reasonable attorney's fees, court costs, and investigatory costs, incurred in obtaining injunctive relief or civil penalties, or both, under this section. Amounts collected by the attorney general under this section shall be deposited in the general revenue fund and may be appropriated only for the investigation and prosecution of other cases under this chapter.

(g) The fees associated with an action under this section are the same as in a civil case, but the fees may be assessed only against the defendant. (Bus. & Com. Code, Sec. 48.201, as added Acts 79th Leg., R.S., Ch. 294.)

Sec. 521.152. DECEPTIVE TRADE PRACTICE. A violation of Section 521.051 is a deceptive trade practice actionable under Subchapter E, Chapter 17. (Bus. & Com. Code, Sec. 48.203, as added Acts 79th Leg., R.S., Ch. 294.)

CHAPTER 522. IDENTITY THEFT BY ELECTRONIC DEVICE

Sec. 522.001. DEFINITIONS

Sec. 522.002. OFFENSE; PENALTY

CHAPTER 522. IDENTITY THEFT BY ELECTRONIC DEVICE

Sec. 522.001. DEFINITIONS. In this chapter:

(1) "Payment card" means a credit card, debit card, check card, or other card that is issued to an authorized user to purchase or obtain goods, services, money, or any other thing of value.

(2) "Re-encoder" means an electronic device that can be used to transfer encoded information from a magnetic strip on a payment card onto the magnetic strip of a different payment card.

(3) "Scanning device" means an electronic device used to access, read, scan, or store information encoded on the magnetic strip of a payment card. (Bus. & Com. Code, Sec. 35.58, Subsec. (a), as added by Acts 78th Leg., R.S., Ch. 649.)

Sec. 522.002. OFFENSE; PENALTY. (a) A person commits an offense if the person uses a scanning device or re-encoder to access, read, scan, store, or transfer information encoded on the magnetic strip of a payment card without the consent of an authorized user of the payment card and with intent to harm or defraud another.

(b) An offense under this section is a Class B misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law. (Bus. & Com. Code, Sec. 35.58, Subsecs. (b), (c), (d), as added by Acts 78th Leg., R.S., Ch. 649.)

CHAPTER 523. PROVISIONS RELATING TO VICTIMS OF IDENTITY THEFT

Sec. 523.001. EXTENSION OF CREDIT TO VICTIM OF IDENTITY THEFT

Sec. 523.002. VERIFICATION OF CONSUMER IDENTITY

Sec. 523.003. NOTATION OF FORGED CHECK

CHAPTER 523. PROVISIONS RELATING TO VICTIMS OF IDENTITY THEFT

Sec. 523.001. EXTENSION OF CREDIT TO VICTIM OF IDENTITY THEFT. (a) In this section, "victim of identity theft" means an individual who has filed a criminal complaint alleging the commission of an offense under Section 32.51, Penal Code, other than a person who is convicted of an offense under Section 37.08, Penal Code, with respect to that complaint.

(b) A person who has been notified that an individual has been the victim of identity theft may not deny the individual an extension of credit, including a loan, in the individual's name or restrict or limit the credit extended solely because the individual has been a victim of identity theft. This subsection does not prohibit a person from denying an individual an extension of credit for a reason other than the individual's having been a victim of identity theft, including by reason of the individual's lack of capacity to contract.

(c) A license issued under Subtitle B, Title 4, Finance

Code, that is held by a person who violates this section is subject to revocation or suspension under that subtitle. (Bus. & Com. Code, Sec. 35.585.)

Sec. 523.002. VERIFICATION OF CONSUMER IDENTITY. (a) In this section:

(1) "Consumer report" has the meaning assigned by Section 20.01.

(2) "Extension of credit" does not include:

(A) an increase in the dollar limit of an existing open-end credit plan as defined by federal Regulation Z (12 C.F.R. Section 226.2), as amended; or

(B) any change to, or review of, an existing credit account.

(3) "Security alert" has the meaning assigned by Section 20.01.

(b) A person who receives notification of a security alert under Section 20.032 in connection with a request for a consumer report for the approval of a credit-based application, including an application for an extension of credit, a purchase, lease, or rental agreement for goods, or for an application for a noncredit-related service, may not lend money, extend credit, or authorize an application without taking reasonable steps to verify the consumer's identity.

(c) If a consumer has included with a security alert a specified telephone number to be used for identity verification purposes, a person who receives that number with a security alert must take reasonable steps to contact the consumer using that

number before lending money, extending credit, or completing any purchase, lease, or rental of goods, or approving any noncredit-related services.

(d) If a person uses a consumer report to facilitate the extension of credit or for any other transaction on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person, rather than the subsidiary, affiliate, agent, assignee, or prospective assignee, may verify the consumer's identity. (Bus. & Com. Code, Sec. 35.59.)

Sec. 523.003. NOTATION OF FORGED CHECK. (a) In this section, "victim of identity theft" means a person who has filed with an appropriate law enforcement agency a criminal complaint alleging commission of an offense under Section 32.51, Penal Code.

(b) A financial institution, in accordance with its customary procedures, shall process as forgeries checks received on the account of a victim of identity theft if the victim:

(1) closes the account at the financial institution as a result of the identity theft;

(2) notifies the financial institution that the identity theft is the reason for closing the account;

(3) provides the financial institution with a copy of the criminal complaint described by Subsection (a); and

(4) requests that the financial institution return checks with the notation "forgery."

(c) A victim of identity theft who requests that a financial institution return checks with the notation "forgery" as provided by Subsection (b):

(1) may not assert that the financial institution is liable under Section 4.402 for wrongfully dishonoring a check returned after the victim makes the request; and

(2) shall hold the financial institution harmless for acting in accordance with the victim's request. (Bus. & Com. Code, Sec. 35.591.)

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

CHAPTER 601. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601.001. DEFINITIONS

Sec. 601.002. APPLICABILITY OF CHAPTER; EXCEPTION

[Sections 601.003-601.050 reserved for expansion]

SUBCHAPTER B. CONSUMER'S RIGHT TO CANCEL TRANSACTION

Sec. 601.051. CONSUMER'S RIGHT TO CANCEL

Sec. 601.052. NOTICE OF CONSUMER'S RIGHT TO CANCEL REQUIRED

Sec. 601.053. COMPLETED CANCELLATION FORM REQUIRED

Sec. 601.054. USE OF FORMS AND NOTICES PRESCRIBED BY THE FEDERAL TRADE COMMISSION AUTHORIZED

Sec. 601.055. ALTERNATIVE NOTICE AUTHORIZED FOR CERTAIN CONSUMER TRANSACTIONS

[Sections 601.056-601.100 reserved for expansion]

SUBCHAPTER C. RIGHTS AND DUTIES OF CONSUMER AND MERCHANT

Sec. 601.101. MERCHANT'S COMPENSATION

Sec. 601.102. CONSUMER'S RETENTION OF GOODS OR TITLE TO REAL PROPERTY AUTHORIZED

Sec. 601.103. CONSUMER'S DUTIES WITH RESPECT TO DELIVERED GOODS OR REAL PROPERTY

[Sections 601.104-601.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED ACTS AND CONDUCT BY MERCHANT

Sec. 601.151. CONFESSION OF JUDGMENT OR WAIVER OF RIGHTS

Sec. 601.152. FAILURE TO INFORM OR MISREPRESENTATION OF RIGHT TO CANCEL

Sec. 601.153. TRANSFER OF INDEBTEDNESS DURING CERTAIN PERIOD

Sec. 601.154. FAILURE TO TAKE CERTAIN ACTIONS FOLLOWING RECEIPT OF NOTICE OF CANCELLATION

[Sections 601.155-601.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 601.201. CERTAIN SALES OR CONTRACTS VOID

Sec. 601.202. LIABILITY FOR DAMAGES

Sec. 601.203. ALTERNATIVE RECOVERY UNDER CERTAIN CIRCUMSTANCES

Sec. 601.204. DECEPTIVE TRADE PRACTICE

Sec. 601.205. INJUNCTION

CHAPTER 601. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks or acquires real property, money or other personal property, services, or credit for personal, family, or household purposes.

(2) "Consumer transaction" means a transaction between a merchant and one or more consumers.

(3) "Merchant" means a party to a consumer transaction other than a consumer.

(4) "Merchant's place of business" means a merchant's main or permanent branch office or local address. For a state or national bank or savings and loan association, the term includes an approved branch office and a registered loan production office. (Bus. & Com. Code, Sec. 39.001.)

Sec. 601.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a) This chapter applies only to a consumer transaction in which:

(1) the merchant or the merchant's agent engages in a personal solicitation of a sale to the consumer at a place other than the merchant's place of business;

(2) the consumer's agreement or offer to purchase is given to the merchant or the merchant's agent at a place other than the merchant's place of business; and

(3) the agreement or offer is for:

(A) the purchase of goods or services for consideration that exceeds $25, payable in installments or in cash; or

(B) the purchase of real property for consideration that exceeds $100, payable in installments or in cash.

(b) Notwithstanding Subsection (a), this chapter does not apply to:

(1) a purchase of farm equipment;

(2) an insurance sale regulated by the Texas Department of Insurance;

(3) a sale of goods or services made:

(A) under a preexisting revolving charge account or retail charge agreement; or

(B) after negotiations between the parties at a business establishment in a fixed location where goods or services are offered or exhibited for sale; or

(4) a sale of real property if:

(A) the purchaser is represented by a licensed attorney;

(B) the transaction is negotiated by a licensed real estate broker; or

(C) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property. (Bus. & Com. Code, Sec. 39.002.)

[Sections 601.003-601.050 reserved for expansion]

SUBCHAPTER B. CONSUMER'S RIGHT TO CANCEL TRANSACTION

Sec. 601.051. CONSUMER'S RIGHT TO CANCEL. In addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase. (Bus. & Com. Code, Sec. 39.003.)

Sec. 601.052. NOTICE OF CONSUMER'S RIGHT TO CANCEL REQUIRED. (a) A merchant must provide a consumer with a complete receipt or copy of a contract pertaining to the consumer transaction at the time of its execution.

(b) The document provided under Subsection (a) must:

(1) be in the same language as that principally used in the oral sales presentation;

(2) contain the date of the transaction;

(3) contain the name and address of the merchant; and

(4) contain a statement:

(A) in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used; and

(B) in boldfaced type of a minimum size of 10 points in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT." (Bus. & Com. Code, Secs. 39.004(a), (b).)

Sec. 601.053. COMPLETED CANCELLATION FORM REQUIRED. (a) A merchant that provides a document under Section 601.052 must attach to the document a completed notice of cancellation form in duplicate. The form must:

(1) be easily detachable;

(2) be in the same language as the document provided under Section 601.052; and

(3) contain the following information and statements in 10-point boldfaced type:

"NOTICE OF CANCELLATION

<u>(enter date of transaction)</u>

"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

"IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

"IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

"TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(date)

(buyer's signature)"

(b) A merchant may not fail to include on both copies of the form described by Subsection (a):

(1) the name of the merchant;

(2) the address of the merchant's place of business;

(3) the date of the transaction; and

(4) a date not earlier than the third business day after the date of the transaction by which the consumer must give notice of cancellation. (Bus. & Com. Code, Secs. 39.004(c), 39.008(a) (part).)

Sec. 601.054. USE OF FORMS AND NOTICES PRESCRIBED BY THE FEDERAL TRADE COMMISSION AUTHORIZED. The use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with Sections 601.052 and 601.053. (Bus. & Com. Code, Sec. 39.004(d).)

Sec. 601.055. ALTERNATIVE NOTICE AUTHORIZED FOR CERTAIN CONSUMER TRANSACTIONS. A consumer transaction in which the contract price does not exceed $200 complies with the notice requirements of Sections 601.052 and 601.053 if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for the goods, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously stated on the face or reverse side of the sales ticket. (Bus. & Com. Code, Sec. 39.004(e).)

[Sections 601.056-601.100 reserved for expansion]

SUBCHAPTER C. RIGHTS AND DUTIES OF CONSUMER AND MERCHANT

Sec. 601.101. MERCHANT'S COMPENSATION. A merchant is not

entitled to compensation for services performed under a consumer transaction canceled under this chapter. (Bus. & Com. Code, Sec. 39.005.)

Sec. 601.102. CONSUMER'S RETENTION OF GOODS OR TITLE TO REAL PROPERTY AUTHORIZED. Until a merchant has complied with this chapter, a consumer with possession of goods or the right or title to real property delivered by the merchant:

(1) may retain possession of the goods or the right or title to the real property; and

(2) has a lien on the goods or real property to the extent of any recovery to which the consumer is entitled. (Bus. & Com. Code, Sec. 39.006.)

Sec. 601.103. CONSUMER'S DUTIES WITH RESPECT TO DELIVERED GOODS OR REAL PROPERTY. (a) Within a reasonable time after a cancellation under this chapter, the consumer must, on demand, tender to the merchant any goods or any right or title to real property delivered by the merchant under the consumer transaction.

(b) The consumer is not obligated to tender goods at a place other than the consumer's residence.

(c) If the merchant fails to demand possession of the goods or the right or title to real property within a reasonable time after cancellation, the goods or real property become the property of the consumer without obligation to pay.

(d) Goods or real property in possession of the consumer are at the risk of the merchant, except that the consumer shall take reasonable care of the goods or the real property both before and for a reasonable time after cancellation.

(e) For purposes of this section, 20 days is presumed to be a reasonable time. (Bus. & Com. Code, Sec. 39.007.)

[Sections 601.104-601.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED ACTS AND CONDUCT BY MERCHANT

Sec. 601.151. CONFESSION OF JUDGMENT OR WAIVER OF RIGHTS. A merchant may not include in a contract or receipt pertaining to a consumer transaction a confession of judgment or a waiver of any of the rights to which the consumer is entitled under this chapter. (Bus. & Com. Code, Sec. 39.008(a) (part).)

Sec. 601.152. FAILURE TO INFORM OR MISREPRESENTATION OF RIGHT TO CANCEL. A merchant may not:

(1) at the time the consumer signs the contract pertaining to a consumer transaction or purchases the goods, services, or real property, fail to inform the consumer orally of the right to cancel the transaction; or

(2) misrepresent in any manner the consumer's right to cancel. (Bus. & Com. Code, Sec. 39.008(a) (part).)

Sec. 601.153. TRANSFER OF INDEBTEDNESS DURING CERTAIN PERIOD. A merchant may not negotiate, transfer, sell, or assign a note or other evidence of indebtedness to a finance company or other third party before midnight of the fifth business day after the date the contract pertaining to a consumer transaction was signed or the goods or services were purchased. (Bus. & Com. Code, Sec. 39.008(a) (part).)

Sec. 601.154. FAILURE TO TAKE CERTAIN ACTIONS FOLLOWING RECEIPT OF NOTICE OF CANCELLATION. A merchant may not:

(1) fail to notify the consumer before the end of the

10th business day after the date the merchant receives the notice of cancellation whether the merchant intends to repossess or abandon any shipped or delivered goods;

(2) fail or refuse to honor a valid cancellation under this chapter by a consumer; or

(3) fail before the end of the 10th business day after the date the merchant receives a valid notice of cancellation to:

(A) refund all payments made under the contract or sale;

(B) return any goods or property traded in to the merchant in substantially the same condition as when received by the merchant;

(C) cancel and return a negotiable instrument executed by the consumer in connection with the contract of sale;

(D) take any action appropriate to terminate promptly any security interest created in the transaction; or

(E) restore improvements on real property to the same condition as when the merchant took title to or possession of the real property unless the consumer requests otherwise. (Bus. & Com. Code, Sec. 39.008(a) (part).)

[Sections 601.155-601.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 601.201. CERTAIN SALES OR CONTRACTS VOID. A sale or contract entered into under a consumer transaction in violation of Section 601.053(b) or Subchapter D is void. (Bus. & Com. Code, Sec. 39.008(b).)

Sec. 601.202. LIABILITY FOR DAMAGES. A merchant who

violates this chapter is liable to the consumer for:

(1) actual damages suffered by the consumer as a result of the violation;

(2) reasonable attorney's fees; and

(3) court costs. (Bus. & Com. Code, Sec. 39.008(c).)

Sec. 601.203. ALTERNATIVE RECOVERY UNDER CERTAIN CIRCUMSTANCES. If the merchant fails to tender goods or property traded to the merchant in substantially the same condition as when received by the merchant, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement. (Bus. & Com. Code, Sec. 39.008(d).)

Sec. 601.204. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b). In addition to any remedy under this chapter, a remedy under Subchapter E, Chapter 17, is also available for a violation of this chapter. (Bus. & Com. Code, Sec. 39.008(e).)

Sec. 601.205. INJUNCTION. If the attorney general believes that a person is violating or about to violate this chapter, the attorney general may bring an action in the name of the state to restrain or enjoin the person from violating this chapter. (Bus. & Com. Code, Sec. 39.009.)

CHAPTER 602. DELIVERY OF UNSOLICITED GOODS

Sec. 602.001. INAPPLICABILITY OF CHAPTER TO SUBSTITUTED GOODS

Sec. 602.002. ACTIONS AUTHORIZED ON DELIVERY OF UNSOLICITED GOODS

Sec. 602.003. CERTAIN UNSOLICITED GOODS CONSIDERED GIFT
Sec. 602.004. MISTAKEN DELIVERY

CHAPTER 602. DELIVERY OF UNSOLICITED GOODS

Sec. 602.001. INAPPLICABILITY OF CHAPTER TO SUBSTITUTED GOODS. This chapter does not apply to goods substituted for goods ordered or solicited by the recipient of the goods. (Bus. & Com. Code, Sec. 35.45(d).)

Sec. 602.002. ACTIONS AUTHORIZED ON DELIVERY OF UNSOLICITED GOODS. Unless otherwise agreed, a person to whom unsolicited goods are delivered:

(1) is entitled to refuse to accept delivery of the goods; and

(2) is not required to return the goods to the sender. (Bus. & Com. Code, Sec. 35.45(a).)

Sec. 602.003. CERTAIN UNSOLICITED GOODS CONSIDERED GIFT. (a) Unsolicited goods that are addressed to or intended for the recipient are considered a gift to the recipient.

(b) The recipient may use or dispose of goods described by Subsection (a) in any manner without obligation to the sender. (Bus. & Com. Code, Sec. 35.45(b).)

Sec. 602.004. MISTAKEN DELIVERY. A person who receives unsolicited goods as the result of a bona fide mistake shall return the goods. The sender has the burden of proof as to the mistake. (Bus. & Com. Code, Sec. 35.45(c).)

CHAPTER 603. REGULATION OF CONSUMER CONTRACTS CREATED BY ACCEPTANCE OF CHECK OR OTHER DRAFT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 603.001. DEFINITIONS
Sec. 603.002. APPLICABILITY OF CHAPTER

[Sections 603.003-603.050 reserved for expansion]

SUBCHAPTER B. REQUIRED DISCLOSURES AND NOTICES

Sec. 603.051. REQUIRED DISCLOSURE ON CHECK OR OTHER DRAFT
Sec. 603.052. REQUIRED NOTICE OF RIGHT TO TERMINATE ACCEPTANCE OF OFFER
Sec. 603.053. EFFECT OF NONCOMPLIANCE

[Sections 603.054-603.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 603.101. DECEPTIVE TRADE PRACTICE

CHAPTER 603. REGULATION OF CONSUMER CONTRACTS CREATED BY ACCEPTANCE OF CHECK OR OTHER DRAFT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 603.001. DEFINITIONS. Unless the context requires a different definition, the definitions provided by Chapter 3 apply to this chapter. (Bus. & Com. Code, Sec. 35.455(a).)

Sec. 603.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to a person who solicits business in this state by mailing an individual a check or other draft payable to that individual.

(b) This chapter does not apply to a financial institution as defined by Section 201.101, Finance Code, or an authorized

lender as defined by Section 341.001 of that code, that sends a check or other draft to an existing or prospective account holder authorizing that person to access an extension of credit. (Bus. & Com. Code, Sec. 35.455(b).)

[Sections 603.003-603.050 reserved for expansion]

SUBCHAPTER B. REQUIRED DISCLOSURES AND NOTICES

Sec. 603.051. REQUIRED DISCLOSURE ON CHECK OR OTHER DRAFT. (a) A person who makes an offer that the recipient may accept by endorsing and negotiating a check or other draft shall disclose on the check or other draft that by signing and negotiating the instrument, the depositor agrees to pay for future goods or services as a result of the contract.

(b) The disclosure required by Subsection (a) must be clear, conspicuous, and located on the check or other draft next to the place for endorsement. (Bus. & Com. Code, Sec. 35.455(c).)

Sec. 603.052. REQUIRED NOTICE OF RIGHT TO TERMINATE ACCEPTANCE OF OFFER. (a) If an offer described by Section 603.051 includes a free membership period, trial period, or other incentive with a time limit, and if the offer results in a contract unless the recipient terminates the acceptance of the offer not later than the end of the time period, the offeror shall send notice to the recipient, at least two weeks before debiting any account, of the recipient's obligation to terminate the recipient's acceptance of the offer.

(b) The notice required by Subsection (a) must be clear and conspicuous. If the offeror bills the recipient by mailing an invoice, the notice may be included with the invoice. (Bus. & Com.

Code, Sec. 35.455(d).)

Sec. 603.053. EFFECT OF NONCOMPLIANCE. (a) An offer described by Section 603.051 is void if the offeror:

(1) does not make the disclosure required by that section;

(2) does not send notice as required by Section 603.052, if applicable; or

(3) provides an incentive with a time limit, including a free membership period or trial period, that is less than two weeks in length.

(b) A delivery of goods or services to the recipient does not operate to form a contract between the offeror and the recipient if:

(1) the offer does not contain the disclosure required by Section 603.051;

(2) the offer is not followed by a notice required by Section 603.052, if applicable; or

(3) the offeror fails to honor the recipient's cancellation or termination of the acceptance of the offer made under the terms of the offer or as required by Section 603.052. (Bus. & Com. Code, Secs. 35.455(e), (f).)

[Sections 603.054-603.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 603.101. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter. (Bus. & Com. Code, Sec. 35.455(g).)

CHAPTER 604. SALE OR ISSUANCE OF STORED VALUE CARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 604.001. DEFINITION OF STORED VALUE CARD

Sec. 604.002. INAPPLICABILITY OF CHAPTER

Sec. 604.003. CAUSE OF ACTION NOT CREATED

[Sections 604.004-604.050 reserved for expansion]

SUBCHAPTER B. PERMISSIBLE FEES

Sec. 604.051. FEES AND CHARGES RELATED TO ISSUANCE AND HANDLING OF CARD

Sec. 604.052. FEES OR CHARGES THAT DECREASE UNREDEEMED BALANCE OF CARD

[Sections 604.053-604.100 reserved for expansion]

SUBCHAPTER C. REQUIRED DISCLOSURES

Sec. 604.101. REQUIRED DISCLOSURE OF CERTAIN MATTERS APPLICABLE TO CARD

Sec. 604.102. REQUIRED PRINTING OF CERTAIN DISCLOSURES

Sec. 604.103. VALIDITY OF CARD SOLD WITHOUT REQUIRED DISCLOSURES

CHAPTER 604. SALE OR ISSUANCE OF STORED VALUE CARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 604.001. DEFINITION OF STORED VALUE CARD. In this chapter, "stored value card":

(1) means a record, as defined by Section 322.002, including a record that contains a microprocessor chip, magnetic strip, or other means of storing information:

(A) that evidences a promise made for monetary consideration by the seller or issuer of the record that goods or

services will be provided to the owner of the record in the value shown in the record;

(B) that is prefunded; and

(C) the value of which is reduced on redemption; and

(2) includes a gift card or gift certificate. (Bus. & Com. Code, Secs. 35.42(a)(1), (2).)

Sec. 604.002. INAPPLICABILITY OF CHAPTER. This chapter does not apply to a stored value card that:

(1) is issued by:

(A) a financial institution acting as a financial agent of the United States or this state;

(B) a federally insured financial institution, as defined by Section 201.101, Finance Code, if the financial institution is primarily liable for the card as the issuing principal; or

(C) an air carrier holding a certificate of public convenience and necessity under Title 49, United States Code;

(2) is issued as a prepaid calling card by a prepaid calling card company regulated under Section 55.253, Utilities Code;

(3) is distributed by the issuer to a person under an awards, rewards, loyalty, incentive, rebate, or promotional program and is not issued or reloaded in exchange for money tendered by the cardholder;

(4) is sold below face value or donated to:

(A) an employee of the seller or issuer;

(B) a nonprofit or charitable organization; or

(C) an educational institution for fund-raising purposes; or

(5) does not expire and for which the seller does not charge a fee other than a fee described in Section 604.051. (Bus. & Com. Code, Secs. 35.42(b), (c).)

Sec. 604.003. CAUSE OF ACTION NOT CREATED. This chapter does not create a cause of action against a person who issues or sells a stored value card. (Bus. & Com. Code, Sec. 35.42(g).)

[Sections 604.004-604.050 reserved for expansion]

SUBCHAPTER B. PERMISSIBLE FEES

Sec. 604.051. FEES AND CHARGES RELATED TO ISSUANCE AND HANDLING OF CARD. If disclosed as required by Subchapter C, the issuer of a stored value card may impose and collect a reasonable:

(1) handling fee in connection with the issuance of or adding of value to the card;

(2) access fee for a card transaction conducted at an unmanned teller machine, as defined by Section 59.301, Finance Code; and

(3) reissue or replacement charge if an expired or lost card is reissued or replaced. (Bus. & Com. Code, Sec. 35.42(d).)

Sec. 604.052. FEES OR CHARGES THAT DECREASE UNREDEEMED BALANCE OF CARD. The issuer of a stored value card may impose or collect a periodic fee or other charge that causes the unredeemed balance of the card to decrease over time only if the fee:

(1) is reasonable;

(2) is not assessed until after the first anniversary of the date the card is sold or issued; and

(3) is disclosed as required by Subchapter C. (Bus. & Com. Code, Sec. 35.42(e).)

[Sections 604.053-604.100 reserved for expansion]

SUBCHAPTER C. REQUIRED DISCLOSURES

Sec. 604.101. REQUIRED DISCLOSURE OF CERTAIN MATTERS APPLICABLE TO CARD. An expiration date or policy, fee, or other material restriction or contract term applicable to a stored value card must be clearly and conspicuously disclosed at the time the card is sold or issued to a person to enable the person to make an informed decision before purchasing the card. (Bus. & Com. Code, Sec. 35.42(f) (part).)

Sec. 604.102. REQUIRED PRINTING OF CERTAIN DISCLOSURES. In addition to the disclosure required under Section 604.101, a disclosure regarding the expiration of a stored value card or a periodic fee that reduces the unredeemed value of a stored value card must be legibly printed on the card. (Bus. & Com. Code, Sec. 35.42(f) (part).)

Sec. 604.103. VALIDITY OF CARD SOLD WITHOUT REQUIRED DISCLOSURES. A stored value card sold without the disclosure required by this subchapter of an expiration date or policy, fee, or other material restriction or contract term applicable to the card is valid until redeemed or replaced. (Bus. & Com. Code, Sec. 35.42(f) (part).)

TITLE 13. CONTESTS AND OTHER PROMOTIONS

CHAPTER 621. CONTESTS AND GIFT GIVEAWAYS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 621.001. SHORT TITLE

Sec. 621.002. CONSTRUCTION OF CHAPTER

Sec. 621.003. DEFINITIONS

Sec. 621.004. INAPPLICABILITY OF CHAPTER TO CERTAIN SALES PRESENTATIONS

Sec. 621.005. DETERMINATION OF RETAIL VALUE OF PRIZE OR GIFT

Sec. 621.006. DEPOSIT REQUIREMENTS

[Sections 621.007-621.050 reserved for expansion]

SUBCHAPTER B. GIFT OFFERS

Sec. 621.051. APPLICABILITY OF SUBCHAPTER

Sec. 621.052. REQUIRED DISCLOSURES RELATING TO GIFTS

Sec. 621.053. PROHIBITED ACTS RELATING TO GIFTS

Sec. 621.054. LIMITATIONS ON CONDITIONING GIFT ON PAYMENT OF CONSIDERATION, CHARGE, OR EXPENSE

Sec. 621.055. LIMITATIONS ON CONDITIONING GIFT ON PURCHASE

[Sections 621.056-621.100 reserved for expansion]

SUBCHAPTER C. MATCHED CONTESTS AND DRAWINGS

Sec. 621.101. APPLICABILITY OF SUBCHAPTER

Sec. 621.102. REQUIRED DISCLOSURES RELATING TO PRIZES GENERALLY

Sec. 621.103. REQUIREMENTS FOR MATCHED CONTEST

Sec. 621.104. REQUIRED DISCLOSURES RELATING TO MATCHED CONTEST

Sec. 621.105. PROHIBITED ACTS RELATING TO MATCHED CONTEST

Sec. 621.106. REQUIRED DISCLOSURES RELATING TO DRAWINGS

Sec. 621.107. PROHIBITED ACTS RELATING TO DRAWINGS

Sec. 621.108. CONDITIONING PRIZE ON PAYMENT OF CONSIDERATION, CHARGE, OR EXPENSE PROHIBITED; EXCEPTIONS

Sec. 621.109. CONDITIONING PRIZE ON PURCHASE PROHIBITED

[Sections 621.110-621.150 reserved for expansion]

SUBCHAPTER D. FULFILLMENT OF GIFT AND PRIZE OFFERS

Sec. 621.151. AVAILABILITY AND AWARDING OF GIFT OR PRIZE

Sec. 621.152. RAINCHECK REQUIREMENTS

Sec. 621.153. ISSUANCE OF CHECK OR MONEY ORDER IN LIEU OF GIFT OR MINOR PRIZE

Sec. 621.154. CERTIFICATE PERMITTED FOR LODGING, AIRFARE, TRIP, OR RECREATIONAL ACTIVITY

[Sections 621.155-621.200 reserved for expansion]

SUBCHAPTER E. CONTEST RECORDS

Sec. 621.201. APPLICABILITY OF SUBCHAPTER

Sec. 621.202. REQUIRED RECORDS FOR CONTESTS OTHER THAN DRAWINGS

Sec. 621.203. REQUIRED RECORDS FOR DRAWINGS

Sec. 621.204. DISCLOSURE OF MAJOR PRIZES AND WINNERS ON REQUEST

Sec. 621.205. RECORDS AVAILABLE TO ATTORNEY GENERAL

[Sections 621.206-621.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 621.251. CRIMINAL PENALTY

Sec. 621.252. DECEPTIVE TRADE PRACTICE

CHAPTER 621. CONTESTS AND GIFT GIVEAWAYS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 621.001. SHORT TITLE. This chapter may be cited as the Contest and Gift Giveaway Act. (Bus. & Com. Code, Sec. 40.001.)

Sec. 621.002. CONSTRUCTION OF CHAPTER. This chapter shall be interpreted to provide the maximum disclosure to, and fair treatment of, a person who enters a contest or gift giveaway through which the person is solicited to attend a sales presentation. (Bus. & Com. Code, Sec. 40.002.)

Sec. 621.003. DEFINITIONS. (a) In this chapter:

(1) "Contest" means a promotional device in which:

(A) a person is offered, as an inducement to attend a sales presentation, a chance to win or receive a prize by complying with specified entry requirements;

(B) the winner or recipient of a prize is determined by random selection; and

(C) all offered prizes are awarded.

(2) "Contest period" means the duration of a contest from the beginning date to the ending date.

(3) "Drawing" means a contest in which the recipient of a prize is determined from all of the entries received.

(4) "Entry form" means a card, letter, entry blank, token, or similar device that identifies a contestant by:

(A) name;

(B) number, letter, or symbol; or

(C) both name and number, letter, or symbol.

(5) "Gift" means an item of value that is offered, transferred, or given to a person as an inducement to attend a sales presentation but that is not offered, transferred, or awarded through a contest. The term does not include a manufacturer's rebate or discount available to the public.

(6) "Major prize" means a prize that has an actual unit cost to the offeror of at least $250.

(7) "Matched contest" means a contest in which:

(A) the winning numbers are preselected, printed on an entry form, and distributed to the public; and

(B) the numbers printed on the entry forms are subsequently matched with the list of winning numbers at a sales location to determine prize eligibility.

(8) "Minor prize" means a prize that:

(A) has an actual unit cost to the offeror of less than $250; and

(B) is transferred to a person who:

(i) attends a sales presentation; and

(ii) is not the winner of a major prize.

(9) "Odds of winning" means a ratio in which:

(A) the numerator equals the actual number of units of an identified prize to be given away during a contest period; and

(B) the denominator equals the number of entry forms distributed or reasonably anticipated to be distributed during the contest period.

(10) "Offeror" means a person who solicits another person to attend a sales presentation.

(11) "Person" includes an individual, a corporation, a firm, and an association.

(12) "Prize" means an item of value that is offered, awarded, or given to a person through a contest. The term does not include a manufacturer's rebate or discount available to the public.

(13) "Sales presentation" means a transaction or occurrence in which a consumer is solicited to execute a contract that obligates the consumer to purchase goods or services as defined by Subchapter E, Chapter 17, including:

(A) a timeshare interest as defined by Section 221.002, Property Code; and

(B) a membership interest as defined by Section 222.003, Property Code.

(14) "Winning number" includes a letter or other identifying symbol.

(b) For purposes of Subsection (a)(1)(B), a determination made by random selection does not include the method used by an offeror to identify a person who will be notified of an offer to win

a prize. (Bus. & Com. Code, Secs. 40.003, 40.035(b).)

Sec. 621.004. INAPPLICABILITY OF CHAPTER TO CERTAIN SALES PRESENTATIONS. This chapter does not apply to a sales presentation that is conducted in conjunction with a business seminar, trade show, convention, or other gathering if only representatives of business entities who attend the seminar, trade show, convention, or gathering are solicited to attend. (Bus. & Com. Code, Sec. 40.004.)

Sec. 621.005. DETERMINATION OF RETAIL VALUE OF PRIZE OR GIFT. (a) The retail value of an item offered as a prize or gift is the price at which at least two principal retail outlets in this state have made a substantial number of sales of an identical item to members of the public during the six months preceding the offering of the prize or gift. The item sold by the principal retail outlets must be from the same manufacturer, and be of the same brand, model, and type, as the item offered as a prize or gift.

(b) If a substantial number of sales of a particular item offered as a prize or gift have not been made in this state during the six months preceding the offering of the item described in the solicitation or if the offeror elects, the retail value of the item is the actual cost of the item to the offeror, net of any rebates, plus 200 percent.

(c) If a prize or gift involves lodging, airfare, a trip, or a recreational activity, the retail value is the retail sales price of that lodging, airfare, trip, or recreational activity to a member of the public who is not involved in a promotional or other discount transaction. (Bus. & Com. Code, Sec. 40.005.)

Sec. 621.006. DEPOSIT REQUIREMENTS. (a) In this section, "refundable deposit" means a deposit that is required to be returned in its entirety to a consumer if:

(1) it is paid by the consumer for a reservation used by the consumer; or

(2) the consumer provides at least five possible reservation dates, none of which can be confirmed.

(b) An offeror may require a refundable deposit for a gift or prize involving lodging, airfare, a trip, or a recreational activity if the deposit requirement is fully, clearly, and conspicuously disclosed.

(c) A condition that restricts the refund of the deposit must be clearly and conspicuously disclosed in at least 10-point type on the solicitation. (Bus. & Com. Code, Secs. 40.006(g) (part), 40.007.)

[Sections 621.007-621.050 reserved for expansion]

SUBCHAPTER B. GIFT OFFERS

Sec. 621.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person who uses a gift as part of an advertising plan or program. (Bus. & Com. Code, Sec. 40.031.)

Sec. 621.052. REQUIRED DISCLOSURES RELATING TO GIFTS. (a) An offeror who notifies a person that the person will receive a gift shall, at the time of the notification, clearly and conspicuously disclose:

(1) that attendance at a sales presentation is required;

(2) the approximate duration of the sales

presentation; and

(3) a description of the product or service being sold.

(b) A person shall disclose:

(1) the retail value of a gift; and

(2) clearly and conspicuously in at least 10-point type that airfare, lodging, or both are not included as part of a gift that is a trip or recreational activity to the extent that either or both are not included. (Bus. & Com. Code, Secs. 40.035(a), 40.036 (part).)

Sec. 621.053. PROHIBITED ACTS RELATING TO GIFTS. A person may not:

(1) use the term "gift" or a similar term in a false, misleading, or deceptive manner;

(2) directly represent or imply that a gift promotion is a contest;

(3) in a gift promotion, use the term:

(A) "finalist," "major award winner," "grand prize recipient," "winner," "won," "will win," or "will be awarded" or use words or phrases of similar meaning that imply that a person is being solicited to enter or participate in a contest; or

(B) "sweepstakes" or "contest" or use words or phrases of similar meaning that imply that a person is being solicited to enter or has won a contest;

(4) represent that a gift has a sponsor, approval, characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the gift does not have;

(5) represent that a gift is of a particular standard, quality, grade, style, or model if the gift is of another; or

(6) use a word or phrase that:

(A) simulates or causes confusion with a document issued by an officer of a court or with the seal or name of a real or fictitious governmental entity; or

(B) implies that the offeror is sending a court document or legal document or that the offeror is a governmental entity. (Bus. & Com. Code, Sec. 40.036 (part).)

Sec. 621.054. LIMITATIONS ON CONDITIONING GIFT ON PAYMENT OF CONSIDERATION, CHARGE, OR EXPENSE. (a) In this section, "redemption or shipping fee" means any kind of consideration paid to the offeror. The term does not include a refundable deposit.

(b) Except as provided by Subsection (c), an offeror may notify a person that the person will receive a gift, the receipt of which is conditioned on the person paying consideration of any kind, paying a charge, or incurring an expense, only if the offeror fully, clearly, and conspicuously discloses the consideration, charge, or expense.

(c) An offeror may not charge a redemption or shipping fee for a gift regardless of whether full disclosure of the fee is made.

(d) A gift is not prohibited in a legitimate trade promotion if the advertising regarding the promotion fully discloses any contractual obligation to be assumed to qualify for the gift. (Bus. & Com. Code, Secs. 40.032 (part), 40.033.)

Sec. 621.055. LIMITATIONS ON CONDITIONING GIFT ON PURCHASE. (a) An offeror may notify a person that the person will receive a

gift, the receipt of which is conditioned on the person purchasing a good or service, only if at the time of notification the offeror clearly and conspicuously discloses that purchase of a good or service is required.

(b) A gift is not prohibited in a legitimate trade promotion if the advertising regarding the promotion fully discloses any requirement of a purchase to be made to qualify for the gift. (Bus. & Com. Code, Secs. 40.032 (part), 40.034.)

[Sections 621.056-621.100 reserved for expansion]

SUBCHAPTER C. MATCHED CONTESTS AND DRAWINGS

Sec. 621.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person who uses a contest as part of an advertising plan or program. (Bus. & Com. Code, Sec. 40.061.)

Sec. 621.102. REQUIRED DISCLOSURES RELATING TO PRIZES GENERALLY. An offeror who notifies a person that the person has won a prize, will receive a prize, or has a chance to win or receive a prize shall, at the time of the notification, clearly and conspicuously disclose:

(1) that attendance at a sales presentation is required;

(2) the approximate duration of the sales presentation; and

(3) a description of the product or service being sold. (Bus. & Com. Code, Sec. 40.064.)

Sec. 621.103. REQUIREMENTS FOR MATCHED CONTEST. (a) The identity and number of the major prizes to be awarded in a matched contest must be:

(1) determined before the contest begins; and

(2) disclosed on each entry form distributed.

(b) Each major prize identified on an entry form for a matched contest shall be awarded.

(c) The contest period for a matched contest may not exceed 12 calendar months.

(d) If, during the contest period for a matched contest, a winning number is not presented or matched for a major prize, the offeror shall conduct a drawing from the names of those individuals who attended a sales presentation during the contest period. The offeror shall conduct the drawing not later than the 60th day after the date the contest period ends. Each major prize identified on the entry forms distributed during the contest period that was not previously awarded shall be awarded at the time of the drawing. (Bus. & Com. Code, Sec. 40.065.)

Sec. 621.104. REQUIRED DISCLOSURES RELATING TO MATCHED CONTEST. (a) A person who uses a matched contest shall clearly and conspicuously disclose in writing in the offer:

(1) that attendance at a sales presentation is required;

(2) the name and street address of the person who is soliciting attendance at a sales presentation;

(3) a description of the product or service being sold;

(4) each requirement, restriction, qualification, and other condition that must be satisfied for a person to enter the contest, including:

(A) any deadline by which the person must visit the location or attend the sales presentation to qualify to receive a prize; and

(B) the approximate duration of the sales presentation;

(5) a statement of the odds of winning each prize offered, expressed as a ratio in Arabic numerals;

(6) the geographical area or states in which the contest will be conducted;

(7) the beginning and ending dates of the contest period;

(8) the identity and address of each person responsible for awarding prizes;

(9) that all unclaimed prizes will be awarded by a drawing and the date of the drawing; and

(10) all other rules and terms of the contest.

(b) A person engaged in the preparation, promotion, sale, distribution, or use of a matched contest shall disclose:

(1) the retail value of a prize; and

(2) clearly and conspicuously in at least 10-point type that airfare, lodging, or both are not included as part of a prize that is a trip or recreational activity to the extent that either or both are not included. (Bus. & Com. Code, Secs. 40.066(a) (part), (b).)

Sec. 621.105. PROHIBITED ACTS RELATING TO MATCHED CONTEST. A person engaged in the preparation, promotion, sale, distribution, or use of a matched contest may not:

(1) use the term "prize" or a similar term in a false, misleading, or deceptive manner;

(2) represent in soliciting a person to enter or participate in the contest that the person is a "finalist," "major award winner," "grand prize recipient," or "winner" or that a person has "won," "will win," or "will be awarded" or use words or phrases of similar meaning unless the representation is true;

(3) represent that a prize has a sponsor, approval, characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the prize does not have;

(4) represent that a prize is of a particular standard, quality, grade, style, or model if the prize is of another;

(5) misrepresent the odds of winning a prize;

(6) misrepresent the rules or terms of participation in the contest;

(7) represent that:

(A) a number, ticket, coupon, symbol, or entry form confers or will confer an advantage on a person that another person does not have or has a value that other entries do not have; or

(B) a person is more likely to win a prize than another person;

(8) fail to obtain a person's express written consent before using that person's name for a promotional purpose;

(9) use or distribute simulated checks or currency or other simulated items of value unless the words

"SPECIMEN--NON-NEGOTIABLE" are clearly and conspicuously printed on those items in at least 18-point type; or

(10) use a word or phrase that:

(A) simulates or causes confusion with a document issued by an officer of a court or with the seal or name of a real or fictitious governmental entity; or

(B) implies that the offeror is sending a court document or legal document or that the offeror is a governmental entity. (Bus. & Com. Code, Sec. 40.066(a) (part).)

Sec. 621.106. REQUIRED DISCLOSURES RELATING TO DRAWINGS. (a) A person may not use a drawing unless the offeror clearly and conspicuously discloses in writing in the offer:

(1) a statement of the odds of winning each prize offered, expressed as a ratio in Arabic numerals, except as provided by Subsection (c);

(2) the exact prizes to be awarded in the drawing;

(3) the beginning and ending dates of the contest period;

(4) the date the drawing will occur; and

(5) the location at which the drawing will occur.

(b) A person engaged in the preparation, promotion, sale, distribution, or use of a drawing shall disclose:

(1) the retail value of a prize; and

(2) clearly and conspicuously in at least 10-point type that airfare, lodging, or both are not included in a prize that is a trip or recreational activity to the extent that either or both are not included.

(c) If the odds of winning a prize cannot be determined because the total number of entries is not known, the offeror shall make a statement to the effect that the odds of winning depend on the total number of entries received. (Bus. & Com. Code, Secs. 40.067(a), (b) (part), (c).)

Sec. 621.107. PROHIBITED ACTS RELATING TO DRAWINGS. A person engaged in the preparation, promotion, sale, distribution, or use of a drawing may not:

(1) use the term "prize" or a similar term in a false, misleading, or deceptive manner;

(2) fail to provide the prize as represented at the conclusion of the drawing;

(3) represent that a prize has a sponsor, approval, characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the prize does not have;

(4) represent that a prize is of a particular standard, quality, grade, style, or model if the prize is of another;

(5) misrepresent the odds of winning a prize; or

(6) misrepresent the rules or terms of participation in the drawing. (Bus. & Com. Code, Sec. 40.067(b) (part).)

Sec. 621.108. CONDITIONING PRIZE ON PAYMENT OF CONSIDERATION, CHARGE, OR EXPENSE PROHIBITED; EXCEPTIONS. (a) Except as provided by Subsection (b), an offeror may not notify a person that the person has won a prize, will receive a prize, or has a chance to win or receive a prize if the receipt of the prize is conditioned on the person paying consideration of any kind, paying

a charge, or incurring an expense.

(b) An offeror may notify a person that the person has won a prize, will receive a prize, or has a chance to receive a prize that is conditioned on the person paying:

(1) expenses incurred for travel to and from the sales location; or

(2) a refundable deposit authorized under Section 621.006. (Bus. & Com. Code, Sec. 40.062.)

Sec. 621.109. CONDITIONING PRIZE ON PURCHASE PROHIBITED. An offeror may not notify a person that the person has won a prize, will receive a prize, or has a chance to win or receive a prize if the receipt of the prize is conditioned on the person purchasing a good or service unrelated to the prize. (Bus. & Com. Code, Sec. 40.063.)

[Sections 621.110-621.150 reserved for expansion]

SUBCHAPTER D. FULFILLMENT OF GIFT AND PRIZE OFFERS

Sec. 621.151. AVAILABILITY AND AWARDING OF GIFT OR PRIZE. (a) Subject to Sections 621.152-621.154, an offeror shall:

(1) in a gift offer, provide each gift as represented to each person who attends a sales presentation; or

(2) in a matched contest, award each prize as represented on the entry form to each person who presents a winning entry.

(b) An offeror shall have available at the sales location a sufficient quantity of:

(1) each gift to meet the reasonable anticipated response to the offer; or

(2) each prize to meet the reasonable anticipated number of prize winners.

(c) Except as provided by Sections 621.152-621.154, an offeror may not provide a coupon book, a discount book, or a certificate or voucher that entitles the holder to redeem the certificate or voucher for a gift or prize required to be available under this section. (Bus. & Com. Code, Secs. 40.006(a), (b), (c).)

Sec. 621.152. RAINCHECK REQUIREMENTS. Subject to Section 621.153(a), if the response to an offer exceeds the number of gifts or major or minor prizes, as applicable, available at the sales location, the offeror, at the time of the visit or, if a sales presentation is required, at the conclusion of the sales presentation, shall tender to the recipient of the offer a raincheck for the gift or prize represented in the offer. Except as provided by Section 621.153(b), the offeror shall send that exact gift or prize to the recipient, without cost to the recipient, not later than the 14th day after the date the recipient visits the sales location or attends the sales presentation. The offeror shall obtain a return receipt from the shipper verifying that the gift or prize was delivered to the recipient. (Bus. & Com. Code, Sec. 40.006(d).)

Sec. 621.153. ISSUANCE OF CHECK OR MONEY ORDER IN LIEU OF GIFT OR MINOR PRIZE. (a) An offeror who knows at the time a recipient of an offer visits a sales location or attends a sales presentation that the gift or minor prize will not be available within 14 days of the date of the visit or attendance shall at the time of the visit or at the conclusion of the sales presentation

tender to the recipient, by cash or check, the amount of $100.

(b) If, after the expiration of the 14th day after the date the offeror issued a raincheck under Section 621.152 for a gift or minor prize, the offeror has not sent the gift or prize, the offeror shall send by mail to the recipient of the raincheck a check or money order in the amount of $100 payable to the recipient. The offeror shall:

(1) send the check or money order not later than the 15th day after the date the offeror issued the raincheck; and

(2) obtain a return receipt from the United States Postal Service that verifies that the check or money order was delivered to the recipient. (Bus. & Com. Code, Secs. 40.006(e), (f).)

Sec. 621.154. CERTIFICATE PERMITTED FOR LODGING, AIRFARE, TRIP, OR RECREATIONAL ACTIVITY. An offeror may give the recipient of a gift or prize involving lodging, airfare, a trip, or a recreational activity a certificate that evidences the recipient's right to the gift or prize. (Bus. & Com. Code, Sec. 40.006(g) (part).)

[Sections 621.155-621.200 reserved for expansion]

SUBCHAPTER E. CONTEST RECORDS

Sec. 621.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person who uses a contest as part of an advertising plan or program. (Bus. & Com. Code, Sec. 40.091.)

Sec. 621.202. REQUIRED RECORDS FOR CONTESTS OTHER THAN DRAWINGS. (a) For each contest other than a drawing, the offeror shall maintain until the second anniversary of the date the last

prize was awarded:

(1) records of the identity and address of each person who is responsible for developing, creating, sponsoring, or implementing any part of the advertising plan or program;

(2) records that show that the winning numbers have been deposited in the mail or otherwise made available to recipients in accordance with the odds statement provided under Section 621.104(a);

(3) a copy of each contest solicitation;

(4) records adequate to determine:

(A) the name and address of each contestant;

(B) the approximate date each contestant was sent the solicitation used in the contest;

(C) the number of major prizes awarded;

(D) the date each major prize was awarded;

(E) the name, brand, type, model number, and manufacturer of each prize offered;

(F) the method of computing the retail value of each prize;

(G) the method of selecting major prize winners;

(H) the name and address of each major prize winner; and

(I) the facts on which each representation or disclosure made in connection with the contest was based and from which the validity of the representation or disclosure can be determined.

(b) Postal receipt records, affidavits of mailing, and a

list of winners or recipients of the major prizes satisfy the requirements of Subsection (a)(2). (Bus. & Com. Code, Sec. 40.092.)

Sec. 621.203. REQUIRED RECORDS FOR DRAWINGS. (a) For each drawing, the offeror shall maintain until the second anniversary of the date the last major prize was awarded:

(1) records of the identity and address of each person who is responsible for developing, creating, sponsoring, or implementing any part of the advertising plan or program;

(2) records that show that the winning entry for each major prize was selected entirely at random from all of the entries received;

(3) a copy of each contest solicitation; and

(4) records adequate to determine:

(A) the total number of entries;

(B) the number of major prizes awarded;

(C) the date each major prize was awarded;

(D) the name, brand, type, model number, and manufacturer of each prize offered;

(E) the method of computing the retail value of each prize;

(F) the method of selecting winners; and

(G) the names and addresses of the winners.

(b) An affidavit from the person who conducted the drawing and a list of winners or recipients of the major prizes satisfies the requirements of Subsection (a)(2). (Bus. & Com. Code, Sec. 40.093.)

Sec. 621.204. DISCLOSURE OF MAJOR PRIZES AND WINNERS ON REQUEST. A person who conducts a contest shall, at the end of the contest period, provide to any person who requests the information:

(1) the names of all major prize winners; and

(2) the prizes won by each winner. (Bus. & Com. Code, Sec. 40.094.)

Sec. 621.205. RECORDS AVAILABLE TO ATTORNEY GENERAL. A person who receives a written request from the attorney general for the records required under this subchapter shall make the records available to the attorney general not later than the 30th day after the date the person received the request. (Bus. & Com. Code, Sec. 40.095.)

[Sections 621.206-621.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 621.251. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates this chapter.

(b) Except as provided by Subsection (c), an offense under this section is a Class B misdemeanor.

(c) An offense under this section is:

(1) a Class A misdemeanor if it is shown at the trial of the defendant that:

(A) the defendant has previously been convicted of an offense under this section; and

(B) the offense for which the defendant is on trial was committed not later than the fifth anniversary of the date of the previous conviction; or

(2) a third degree felony if it is shown at the trial

of the defendant that:

(A) the defendant has previously been twice convicted of an offense under this section; and

(B) the offense for which the defendant is on trial was:

(i) intentional; and

(ii) committed not later than the fifth anniversary of the earlier of the dates of two previous convictions.

(d) Subsection (c)(2) does not apply to a violation of Subchapter D.

(e) A person may not be prosecuted for more than one offense involving the same promotion regardless of whether that promotion is mailed or distributed to more than one person or is used at more than one location. (Bus. & Com. Code, Sec. 40.121.)

Sec. 621.252. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter. (Bus. & Com. Code, Sec. 40.122.)

CHAPTER 622. SWEEPSTAKES

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[Sections 622.003-622.050 reserved for expansion]

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Sec. 622.108. AWARDING MULTIPLE PRIZES

Sec. 622.109. MAILING CERTAIN OFFERS DURING PERIOD FOLLOWING SWEEPSTAKES

Sec. 622.110. PROVIDING NAMES OR ADDRESSES USED IN PROHIBITED SWEEPSTAKES

[Sections 622.111-622.150 reserved for expansion]

SUBCHAPTER D. ACTS OR CONDUCT NOT PROHIBITED

Sec. 622.151. DESCRIPTION OF METHOD OF CHOOSING WINNER

Sec. 622.152. NOTIFICATION OF AND AFFIDAVIT FROM WINNER

[Sections 622.153-622.200 reserved for expansion]

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Sec. 622.201. ACTION BY ATTORNEY GENERAL; VENUE

Sec. 622.202. CIVIL PENALTY

Sec. 622.203. LIABILITY FOR PROVIDING NAMES OR ADDRESSES USED IN PROHIBITED SWEEPSTAKES

Sec. 622.204. INJUNCTIVE AND OTHER RELIEF

Sec. 622.205. NO PRIVATE RIGHT OF ACTION

Sec. 622.206. RECOVERY OF EXPENSES BY ATTORNEY GENERAL

CHAPTER 622. SWEEPSTAKES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 622.001. DEFINITIONS. In this chapter:

(1) "Credit card" means a card that, if covered by the law of this state, would be subject to a lender credit card agreement, as defined by Section 301.002, Finance Code, except that the term does not exclude a card that is subject to an agreement under which:

(A) the obligations are payable in full each month and not deferred; and

(B) no finance charge is assessed when the obligations are paid.

(2) "Debit card" means a card offered by an institution the deposits of which are insured by the Federal Deposit Insurance Corporation or another agency, corporation, or instrumentality chartered by the United States government.

(3) "Imply" means to use any means by which an implication can be conveyed, including:

(A) a statement, question, or request;

(B) conduct;

(C) a graphic or symbol; and

(D) lettering, coloring, font size, font style, or formatting.

(4) "Sweepstakes" means a contest that awards one or more prizes based on chance or the random selection of entries. (Bus. & Com. Code, Secs. 45.001(3), (4), (5), (7).)

Sec. 622.002. ACTS CONSTITUTING CONDUCTING SWEEPSTAKES.

For purposes of this chapter, a person conducts a sweepstakes if the person distributes material that:

(1) promotes a sweepstakes;

(2) describes one or more sweepstakes prizes;

(3) states one or more sweepstakes rules;

(4) includes a current or future opportunity to enter a sweepstakes; or

(5) provides a method for the recipient of the material to obtain additional information about a sweepstakes. (Bus. & Com. Code, Sec. 45.001(2).)

[Sections 622.003-622.050 reserved for expansion]

SUBCHAPTER B. APPLICABILITY OF CHAPTER

Sec. 622.051. CHAPTER LIMITED TO SWEEPSTAKES CONDUCTED THROUGH MAIL; EXCEPTION. (a) This chapter applies only to a sweepstakes conducted through the mail.

(b) This chapter does not apply to a sweepstakes for which the only use of the mail is for a consumer to return an entry form to the sweepstakes sponsor. (Bus. & Com. Code, Secs. 45.002 (part), 45.003(g).)

Sec. 622.052. PRIZE VALUE LESS THAN $50,000. (a) This chapter does not apply to a sweepstakes in which the value of the most valuable prize is less than $50,000.

(b) For purposes of this section, the value of a prize is the greatest of the prize's:

(1) face value;

(2) fair market value; or

(3) present financial value. (Bus. & Com. Code, Sec.

45.003(j).)

Sec. 622.053. ADVERTISEMENT OR INSERT IN MAGAZINE, NEWSPAPER, OR CATALOG. This chapter does not apply to a sweepstakes conducted through an advertisement or insert in:

(1) a magazine or newspaper:

(A) that is a publication in which more than 40 percent of the total column inches in each issue consist of advertising space purchased by companies other than:

(i) the publisher;

(ii) an affiliate of the publisher; or

(iii) a vendor for the publisher or an affiliate; and

(B) that is a publication for which more than 50 percent of the total number of copies distributed of each issue are provided to customers who paid for the copy; or

(2) a catalog that is a promotional booklet listing merchandise for sale and that:

(A) is at least 24 pages long;

(B) has a circulation of at least 250,000; and

(C) either:

(i) requires customers to go to a physical location to purchase the advertised items; or

(ii) is published by a company that derives more than 50 percent of the company's total gross revenue from sales occurring at physical locations. (Bus. & Com. Code, Secs. 45.001(1), (6), 45.003(a).)

Sec. 622.054. CHARITABLE RAFFLE. This chapter does not

apply to a charitable raffle regulated by Chapter 2002, Occupations Code. (Bus. & Com. Code, Sec. 45.003(b).)

Sec. 622.055. SWEEPSTAKES REGULATED BY ALCOHOLIC BEVERAGE CODE. This chapter does not apply to a sweepstakes regulated by the Alcoholic Beverage Code. (Bus. & Com. Code, Sec. 45.003(c).)

Sec. 622.056. COMPANY REGULATED UNDER PUBLIC UTILITY REGULATORY ACT. This chapter does not apply to a company regulated under Title 2, Utilities Code. (Bus. & Com. Code, Sec. 45.003(d).)

Sec. 622.057. AIR CARRIER; AIRMAN ASSOCIATION. This chapter does not apply to:

(1) a company that is an air carrier subject to Title 49, United States Code; or

(2) a nonprofit association of airmen who are subject to that title. (Bus. & Com. Code, Sec. 45.003(e).)

Sec. 622.058. CERTAIN RECREATIONAL EVENTS. This chapter does not apply to a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department. (Bus. & Com. Code, Sec. 45.003(f).)

Sec. 622.059. CERTAIN FOOD PRODUCTS. This chapter does not apply to a sweepstakes promoting one or more food products regulated by the United States Food and Drug Administration or the United States Department of Agriculture. (Bus. & Com. Code, Sec. 45.003(n).)

Sec. 622.060. AUDIOVISUAL ENTERTAINMENT WORK, PRODUCT, OR SOUND RECORDING. This chapter does not apply to a company if 75 percent or more of the company's business is:

(1) the systematic development, planning, and

execution of creating audiovisual entertainment works, products, or sound recordings; and

(2) the distribution, sale, and marketing of those works, products, or recordings. (Bus. & Com. Code, Sec. 45.003(o) (part).)

Sec. 622.061. CABLE SYSTEM. This chapter does not apply to a company that owns or operates a cable system, as defined by 47 U.S.C. Section 522, as amended. (Bus. & Com. Code, Sec. 45.003(o) (part).)

[Sections 622.062-622.100 reserved for expansion]

SUBCHAPTER C. PROHIBITED ACTS OR CONDUCT

Sec. 622.101. CONNECTING SWEEPSTAKES ENTRY OR OPERATION TO ORDER OR PURCHASE. (a) A person conducting a sweepstakes may not use a mechanism for entering the sweepstakes that:

(1) has any connection to ordering or purchasing a good or service;

(2) is not identical for all individuals entering the sweepstakes; and

(3) does not have printed on the entry form, in a font size at least as large as the largest font size used on the entry form, the following language: "Buying Will Not Help You Win. Your chances of winning without making a purchase are the same as the chances of someone who purchases something. It is illegal to give any advantage to buyers in a sweepstakes."

(b) A person conducting a sweepstakes may not:

(1) require an individual to order, purchase, or promise to purchase a good or service to enter the sweepstakes;

(2) automatically enter an individual in the sweepstakes because the individual ordered, purchased, or promised to order or purchase a good or service; or

(3) solicit business using an order form or purchasing mechanism that has any role in the operation of the sweepstakes.

(c) Subsections (a)(1) and (b)(3) do not apply to a single sheet of paper that contains both a sweepstakes entry form and an order form if:

(1) the order form is perforated or detachable; and

(2) the entry form must be separated from the order form and returned to a different address than the order form.

(d) Subsections (a) and (b)(2) and (3) do not apply to a sweepstakes offered to promote a credit card or debit card if the official rules of the sweepstakes provide that consumers are entered in the sweepstakes based on the number of purchases made or the amount of money spent. The exception provided by this subsection applies only to a person offering a sweepstakes who qualified as an issuer as of January 1, 2001.

(e) Subsections (a) and (b)(2) and (3) do not apply to a company offering a sweepstakes in which the consumer must go to a physical location to obtain or use the goods or services being sold by the company. (Bus. & Com. Code, Secs. 45.002 (part), 45.003(k), (l), (m).)

Sec. 622.102. USING MULTIPLE SWEEPSTAKES ENTRY ADDRESSES OR MULTIPLE PURPOSES FOR ADDRESS. A person conducting a sweepstakes who provides for entering the sweepstakes by mail may not:

(1) accept entries at more than one address; or

(2) use the address for entry in the sweepstakes for any other purpose. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.103. ALLOWING CHOICE OF PRIZE OR INDICATION OF PREFERRED PRIZE CHARACTERISTICS. A person conducting a sweepstakes may not:

(1) solicit an individual to enter the sweepstakes by invitation or other opportunity; and

(2) allow the individual to choose, or indicate the preferred characteristics of, a prize to be awarded in the sweepstakes unless the choice or indication:

(A) is made on the sweepstakes entry form; and

(B) does not appear on, and is not in any way connected to, an order form or other purchasing mechanism. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.104. SENDING SWEEPSTAKES MATERIAL THAT INCLUDES CERTAIN STATEMENTS OR IMPLICATIONS. A person conducting a sweepstakes may not send material accompanying or relating to the sweepstakes or an offer to enter the sweepstakes that:

(1) states or implies that:

(A) an individual must comply with a restriction or condition to enter the sweepstakes, unless all individuals entering the sweepstakes are required to comply with the identical restriction or condition;

(B) an individual's chances of winning a prize in the sweepstakes are higher, lower, or different in any way because of a factor or circumstance that does not relate to the manner in which a winner is selected;

(C) a winner will be selected at a time or place or in a manner that is different from the actual time or place at which or manner in which a winner is selected;

(D) an individual who orders or purchases a good or service will receive a benefit or be treated differently in the sweepstakes in comparison to an individual who does not order or purchase a good or service; or

(E) an individual who does not order or purchase a good or service will be disadvantaged or treated differently in the sweepstakes in comparison to an individual who orders or purchases a good or service;

(2) states or implies falsely that the individual receiving the material has received special treatment or personal attention from the offeror of the sweepstakes or any officer, employee, or agent of the offeror; or

(3) states that the recipient of the material:

(A) is a winner, if the recipient is not a winner;

(B) may be a winner;

(C) will be a winner if certain conditions are met or certain events occur;

(D) may be or will be among the group from which a winner will be selected; or

(E) has in any way a better chance than another individual of being chosen as a winner. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.105. USING GAME PIECE TO CONVEY INFORMATION OR OFFER TO ENTER. A person conducting a sweepstakes may not convey

information about the sweepstakes or an offer to enter the sweepstakes by using a scratch-off device or any other game piece that suggests an element of chance or luck. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.106. PUBLISHING ADVERTISEMENTS OR RULES WITH INCONSISTENT OR INCOMPLETE PRIZE DESCRIPTIONS. A person conducting a sweepstakes may not publish or cause to be published:

(1) different advertisements for the same sweepstakes that contain inconsistent descriptions of the grand prize to be awarded through the sweepstakes; or

(2) official rules of the sweepstakes that do not uniquely identify the prizes to be awarded and the date the prizes will be awarded. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.107. ENGAGING IN CONDUCT THAT FALSELY INDICATES AN INDIVIDUAL HAS WON. A person conducting a sweepstakes may not:

(1) ask an individual to provide any information or take any action consistent with the individual winning a sweepstakes prize, unless the individual has won a sweepstakes prize; or

(2) provide an individual who has not yet won a sweepstakes prize with a document or other item that simulates an event, circumstance, or condition connected with being a sweepstakes winner. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.108. AWARDING MULTIPLE PRIZES. A person conducting a sweepstakes may not award multiple prizes in the sweepstakes unless all prizes are awarded on the same date and through the same selection process. (Bus. & Com. Code, Sec. 45.002

(part).)

Sec. 622.109. MAILING CERTAIN OFFERS DURING PERIOD FOLLOWING SWEEPSTAKES. A person conducting a sweepstakes may not, during the 30-day period immediately following the last date on which the person conducted the sweepstakes through the mail, offer through the mail:

(1) an opportunity to enter a sweepstakes; or

(2) a nonsweepstakes prize, gift, premium, giveaway, or skill contest. (Bus. & Com. Code, Sec. 45.002 (part).)

Sec. 622.110. PROVIDING NAMES OR ADDRESSES USED IN PROHIBITED SWEEPSTAKES. A person may not provide names or addresses of residents of this state that are used in conducting a sweepstakes that the person knows violates this chapter. (Bus. & Com. Code, Sec. 45.004(d) (part).)

[Sections 622.111-622.150 reserved for expansion]

SUBCHAPTER D. ACTS OR CONDUCT NOT PROHIBITED

Sec. 622.151. DESCRIPTION OF METHOD OF CHOOSING WINNER. This chapter does not prohibit a sweepstakes sponsor from describing in the official sweepstakes rules the method to be used in choosing a winner. (Bus. & Com. Code, Sec. 45.003(h) (part).)

Sec. 622.152. NOTIFICATION OF AND AFFIDAVIT FROM WINNER. This chapter does not prohibit a sweepstakes sponsor, after a winner has been chosen, from:

(1) notifying an individual chosen as a winner; or

(2) obtaining from an individual chosen as a winner an affidavit to verify that the individual:

(A) is eligible to win the prize; and

(B) has complied with the sweepstakes rules. (Bus. & Com. Code, Secs. 45.003(h) (part), (i).)

[Sections 622.153-622.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 622.201. ACTION BY ATTORNEY GENERAL; VENUE. The attorney general may bring an action under this chapter by filing suit in a district court in Travis County or in any county in which a violation occurred. (Bus. & Com. Code, Sec. 45.004(a).)

Sec. 622.202. CIVIL PENALTY. (a) The court shall award the attorney general a civil penalty of not less than $5,000 or more than $50,000 for each violation found.

(b) If the material accompanying or relating to a sweepstakes or an offer to enter a sweepstakes contains multiple statements, implications, representations, or offers that are prohibited by this chapter, each statement, implication, representation, or offer is a separate violation and results in a separate civil penalty. Each individual who receives the material constitutes an additional and separate group of violations of this chapter. (Bus. & Com. Code, Secs. 45.004(b), (c).)

Sec. 622.203. LIABILITY FOR PROVIDING NAMES OR ADDRESSES USED IN PROHIBITED SWEEPSTAKES. (a) A person who violates Section 622.110 is liable for the cumulative civil penalties that result from the person's conduct.

(b) Liability of a person under Subsection (a) does not reduce the liability of the person who conducted the sweepstakes. (Bus. & Com. Code, Sec. 45.004(d) (part).)

Sec. 622.204. INJUNCTIVE AND OTHER RELIEF. The court may

also award injunctive relief or other equitable or ancillary relief that is reasonably necessary to prevent violations of this chapter. (Bus. & Com. Code, Sec. 45.004(g).)

Sec. 622.205. NO PRIVATE RIGHT OF ACTION. This chapter does not create a private right of action. (Bus. & Com. Code, Sec. 45.004(h).)

Sec. 622.206. RECOVERY OF EXPENSES BY ATTORNEY GENERAL. If the attorney general substantially prevails, the court shall award the attorney general reasonable expenses incurred in recovering a civil penalty under this subchapter, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses. (Bus. & Com. Code, Sec. 45.004(e).)

TITLE 14. RECORDINGS

CHAPTER 641. UNAUTHORIZED RECORDINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 641.001. DEFINITIONS

[Sections 641.002-641.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED PRACTICES; PENALTIES

Sec. 641.051. UNAUTHORIZED DUPLICATION OF CERTAIN RECORDINGS

Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE

Sec. 641.053. UNAUTHORIZED OPERATION OF RECORDING DEVICE IN MOTION PICTURE THEATER

Sec. 641.054. LABELING

Sec. 641.055. FORFEITURE

Sec. 641.056. PRIVATE RIGHTS AND REMEDIES NOT AFFECTED

Sec. 641.057. PENALTIES CUMULATIVE

CHAPTER 641. UNAUTHORIZED RECORDINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 641.001. DEFINITIONS. In this chapter:

(1) "Fix" means to embody in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(2) "Live performance" means a recitation, rendering, or playing of a series, in an audible sequence, of:

(A) images;

(B) musical, spoken, or other sounds; or

(C) a combination of images and sounds.

(3) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording:

(A) on which sound is recorded; and

(B) from which the transferred recorded sounds are directly or indirectly derived.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including:

(A) an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or later developed; or

(B) a copy or reproduction that wholly or partly duplicates the original. (Bus. & Com. Code, Sec. 35.91.)

[Sections 641.002-641.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED PRACTICES; PENALTIES

Sec. 641.051. UNAUTHORIZED DUPLICATION OF CERTAIN RECORDINGS. (a) This section applies only to a recording that was initially fixed before February 15, 1972.

(b) A person commits an offense if the person:

(1) knowingly reproduces for sale or causes to be transferred any recording with intent to sell the recording or cause the recording to be sold or use a recording or cause the recording to be used for commercial advantage or private financial gain through public performance without the consent of the owner;

(2) with the knowledge that the sounds on a recording have been reproduced or transferred without the consent of the owner, transports the recording within this state for commercial advantage or private financial gain; or

(3) with the knowledge that a recording has been reproduced or transferred without the consent of the owner:

(A) advertises, offers for sale, sells, or rents the recording;

(B) causes the sale, resale, or rental of the recording; or

(C) possesses the recording for a purpose described by Paragraph (A) or (B).

(c) An offense under this section is punishable by:

(1) imprisonment for a term of not more than five

years, a fine not to exceed $250,000, or both, if:

(A) the offense involves at least 1,000 unauthorized recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) imprisonment for a term of not more than two years, a fine not to exceed $250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings during a 180-day period; or

(3) confinement in the county jail for a term of not more than one year, a fine not to exceed $25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).

(d) This section does not apply to any fees due to the American Society of Composers, Authors and Publishers. (Bus. & Com. Code, Secs. 35.92(a), (b), (d).)

Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE. (a) A person commits an offense if the person, with the knowledge that a live performance has been recorded or fixed without the consent of the owner:

(1) for commercial advantage or private financial gain, advertises, offers for sale, sells, rents, or transports, causes the sale, resale, rental, or transportation of, or possesses for one or more of these purposes a recording containing sounds of the live performance; or

(2) with the intent to sell for commercial advantage or private financial gain, records or fixes the live performance, or causes the live performance to be recorded or fixed on a

recording.

(b) An offense under this section is punishable by:

(1) imprisonment for a term of not more than five years, a fine not to exceed $250,000, or both, if:

(A) the offense involves at least 1,000 unauthorized recordings embodying sound or at least 65 unauthorized audiovisual recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) imprisonment for a term of not more than two years, a fine not to exceed $250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings embodying sound or more than seven but fewer than 65 unauthorized audiovisual recordings during a 180-day period; or

(3) confinement in the county jail for a term of not more than one year, a fine not to exceed $25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).

(c) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(d) For purposes of this section, a person authorized to maintain custody and control over business records that reflect whether the owner of a live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent. A witness called under this subsection is subject to the rules of evidence relating to the competency of a witness to testify and the relevance and

admissibility of the testimony offered. (Bus. & Com. Code, Secs. 35.93(a), (b), (c), (d).)

Sec. 641.053. UNAUTHORIZED OPERATION OF RECORDING DEVICE IN MOTION PICTURE THEATER. (a) In this section:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other place primarily used to exhibit a motion picture.

(b) A person commits an offense if, without the consent of the owner of the theater, the person, with the intent to record a motion picture, knowingly operates the audiovisual recording function of any device in a motion picture theater while the motion picture is being exhibited.

(c) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the person has been previously convicted one time of an offense under this section; or

(2) a felony of the third degree if the person has been previously convicted two or more times of an offense under this section.

(d) It is a defense to prosecution under this section that the audiovisual recording function of the device was operated solely for official law enforcement purposes.

(e) If conduct constituting an offense under this section

also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

(f) A person who reasonably believes that another has knowingly operated the audiovisual recording function of a device in a motion picture theater in violation of this section is privileged to detain that other person in a reasonable manner and for a reasonable time to allow for the arrival of law enforcement authorities. (Bus. & Com. Code, Sec. 35.935.)

Sec. 641.054. LABELING. (a) A person commits an offense if:

(1) for commercial advantage or private financial gain, the person knowingly:

(A) advertises, offers for sale, sells, rents, or transports a recording;

(B) causes the sale, resale, rental, or transportation of a recording; or

(C) possesses a recording for a purpose described by Paragraph (A) or (B); and

(2) the outside cover, box, or jacket of the recording does not clearly and conspicuously disclose:

(A) the actual name and address of the manufacturer; and

(B) the name of the performer or group.

(b) An offense under this section is punishable by:

(1) imprisonment for a term of not more than five years, a fine not to exceed $250,000, or both, if:

(A) the offense involves at least 65 unauthorized

recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) imprisonment for a term of not more than two years, a fine not to exceed $250,000, or both, if the offense involves more than seven but fewer than 65 unauthorized recordings during a 180-day period; or

(3) confinement in the county jail for a term of not more than one year, a fine not to exceed $25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2). (Bus. & Com. Code, Secs. 35.94(a), (b).)

Sec. 641.055. FORFEITURE. If a person is convicted of a violation of this chapter, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of:

(1) all recordings on which the conviction is based; and

(2) all devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based. (Bus. & Com. Code, Sec. 35.95.)

Sec. 641.056. PRIVATE RIGHTS AND REMEDIES NOT AFFECTED. Sections 641.051, 641.052, and 641.054 do not affect the rights and remedies of a party in private litigation. (Bus. & Com. Code, Secs. 35.92(c), 35.93(e), 35.94(c).)

Sec. 641.057. PENALTIES CUMULATIVE. A penalty provided by this chapter is in addition to any other penalty provided under other law. (Bus. & Com. Code, Sec. 35.96.)

TITLE 15. CURRENCY AND TRADE

SUBTITLE A. CURRENCY

CHAPTER 661. EUROPEAN UNION CURRENCY CONVERSION

Sec. 661.001. DEFINITIONS
Sec. 661.002. APPLICABILITY OF CHAPTER
Sec. 661.003. CONFLICTS OF LAW
Sec. 661.004. NO NEGATIVE INFERENCE OR PRESUMPTION CREATED
Sec. 661.005. CONTINUITY OF CONTRACT
Sec. 661.006. EFFECT ON CERTAIN AGREEMENTS

CHAPTER 661. EUROPEAN UNION CURRENCY CONVERSION

Sec. 661.001. DEFINITIONS. In this chapter:

(1) "Euro" means the currency of the member states of the European Community, as amended by the Treaty on European Union. The term is abbreviated as EUR.

(2) "European currency unit" means the currency basket periodically used as the unit of account of the European Community, as defined by Regulation No. 3320/94 of the Council of the European Union and as referred to in Article 109g of the treaty establishing the European Community, as amended by the Treaty on European Union. The term is abbreviated as ECU.

(3) "Introduction of the euro" means the periodic implementation of economic and monetary union in member states of the European Union in accordance with the Treaty on European Union.

(4) "Treaty on European Union" means the Treaty on European Union of February 7, 1992. (Bus. & Com. Code, Sec. 42.001.)

Sec. 661.002. APPLICABILITY OF CHAPTER. This chapter applies to each contract, security, and instrument, including a commercial contract, governed by the laws of this state. (Bus. & Com. Code, Sec. 42.002(a).)

Sec. 661.003. CONFLICTS OF LAW. This chapter prevails to the extent of any conflict between this chapter and any other law of this state. (Bus. & Com. Code, Sec. 42.003.)

Sec. 661.004. NO NEGATIVE INFERENCE OR PRESUMPTION CREATED. With respect to currency alteration other than the introduction of the euro, this chapter does not create any negative inference or negative presumption regarding the validity or enforceability of a contract, security, or instrument denominated wholly or partly in a currency affected by the alteration. (Bus. & Com. Code, Sec. 42.002(b).)

Sec. 661.005. CONTINUITY OF CONTRACT. (a) If a subject or medium of payment of a contract, security, or instrument is the European currency unit or a currency that has been substituted or replaced by the euro, the euro is a commercially reasonable substitute and substantial equivalent that may be:

(1) used in determining the value of the European currency unit or currency, as appropriate; or

(2) tendered, in each case, at the conversion rate specified in, and otherwise computed in accordance with, the regulations adopted by the Council of the European Union.

(b) A person may perform any obligation described by Subsection (a) in euros or in the currency or currencies originally designated in the contract, security, or instrument if that

currency or those currencies remain legal tender, but the person may not perform the obligation in any other currency, regardless of whether that other currency:

(1) has been substituted or replaced by the euro; or

(2) is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

(c) The following occurrences are not considered a discharge of, do not excuse performance under, and do not give a party the right to unilaterally alter or terminate a contract, security, or instrument:

(1) the introduction of the euro;

(2) the tender of euros in connection with any obligation described by Subsection (a);

(3) the determination of the value of any obligation described by Subsection (a); or

(4) the computation or determination of the subject or medium of payment of a contract, security, or instrument with reference to an interest rate or any other basis that has been substituted or replaced because of the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent. (Bus. & Com. Code, Sec. 42.004.)

Sec. 661.006. EFFECT ON CERTAIN AGREEMENTS. This chapter does not alter or impair an agreement between parties that specifically relates to the introduction of the euro. (Bus. & Com. Code, Sec. 42.005.)

[Chapters 662-670 reserved for expansion]

SUBTITLE B. PORT OF ENTRY AUTHORITIES

CHAPTER 671. CITY OF LAREDO PORT OF ENTRY AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 671.001. DEFINITIONS
Sec. 671.002. CREATION OF AUTHORITY
Sec. 671.003. AUTHORITY JURISDICTION

[Sections 671.004-671.050 reserved for expansion]

SUBCHAPTER B. GOVERNING BOARD

Sec. 671.051. COMPOSITION OF BOARD
Sec. 671.052. BOARD TERMS; VACANCY
Sec. 671.053. OFFICERS
Sec. 671.054. REMOVAL
Sec. 671.055. COMPENSATION; REIMBURSEMENT

[Sections 671.056-671.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 671.101. FEES
Sec. 671.102. USE OF MONEY
Sec. 671.103. EFFECT OF AUTHORITY ACTION; CITY APPROVAL
Sec. 671.104. AD VALOREM TAXES AND BONDS PROHIBITED
Sec. 671.105. DEPOSITORY; ORDER TO DISBURSE
Sec. 671.106. AUDIT

CHAPTER 671. CITY OF LAREDO PORT OF ENTRY AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 671.001. DEFINITIONS. In this chapter:

(1) "Authority" means the City of Laredo Port of Entry Authority created under this chapter.

(2) "Board" means the governing board of the authority.

(3) "City" means the city of Laredo.

(4) "Governing body" means the governing body of the city. (V.A.C.S. Art. 1015g-6, Sec. 1.)

Sec. 671.002. CREATION OF AUTHORITY. The city by ordinance may create the City of Laredo Port of Entry Authority for the purposes provided by this chapter. (V.A.C.S. Art. 1015g-6, Sec. 2(a).)

Sec. 671.003. AUTHORITY JURISDICTION. The authority's jurisdiction is coextensive with the area within the boundaries and extraterritorial jurisdiction of the city. (V.A.C.S. Art. 1015g-6, Sec. 2(b).)

[Sections 671.004-671.050 reserved for expansion]

SUBCHAPTER B. GOVERNING BOARD

Sec. 671.051. COMPOSITION OF BOARD. (a) The authority is governed by a board of 11 members appointed by the governing body.

(b) Nine members are voting members who must reside in the authority and two members are nonvoting members who must reside in Mexico.

(c) The voting board members must include:

(1) one representative of United States customs brokers;

(2) one representative of freight forwarders;

(3) one representative of the transportation industry;

(4) one international banker; and

(5) one representative of a maquiladora project. (V.A.C.S. Art. 1015g-6, Secs. 3(a), (b).)

Sec. 671.052. BOARD TERMS; VACANCY. (a) Board members serve staggered two-year terms, with the terms of five members expiring February 1 of each odd-numbered year and the terms of six members expiring February 1 of each even-numbered year.

(b) A vacancy that occurs more than 60 days before the expiration date of a term shall be promptly filled for the unexpired term by the appointment of a member who has the same qualifications as the member creating the vacancy. (V.A.C.S. Art. 1015g-6, Secs. 3(c), (e).)

Sec. 671.053. OFFICERS. The board shall select from among the board's voting members a presiding officer, an assistant presiding officer, a treasurer, and any other officers that the board considers appropriate. (V.A.C.S. Art. 1015g-6, Sec. 3(d).)

Sec. 671.054. REMOVAL. After a hearing, a board member may be removed for cause by a two-thirds vote of the membership of the governing body. (V.A.C.S. Art. 1015g-6, Sec. 3(f).)

Sec. 671.055. COMPENSATION; REIMBURSEMENT. A board member serves without compensation but is entitled to reimbursement for necessary expenses incurred in the performance of duties as a member. (V.A.C.S. Art. 1015g-6, Sec. 4.)

[Sections 671.056-671.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 671.101. FEES. The authority shall establish and collect rentals, tolls, and other appropriate fees:

(1) from an operator of a commercial vehicle entering

the authority by an international bridge; and

(2) for the use of any other facility designated by the city. (V.A.C.S. Art. 1015g-6, Sec. 5(a) (part).)

Sec. 671.102. USE OF MONEY. The authority may use the money collected under this chapter as the board determines appropriate only for the development and promotion of international trade. The authority must obtain the approval of the governing body before any expenditure of money. (V.A.C.S. Art. 1015g-6, Sec. 5(b).)

Sec. 671.103. EFFECT OF AUTHORITY ACTION; CITY APPROVAL. (a) Not later than the 15th day after the date on which the authority or the board acts, the city may approve or disapprove the action.

(b) If the city disapproves an action under Subsection (a), the action has no effect. If the city does not disapprove the action, the action becomes effective on the earlier of:

(1) the date on which the city approves the action; or

(2) the 15th day after the date on which the authority or board acted. (V.A.C.S. Art. 1015g-6, Sec. 5(c).)

Sec. 671.104. AD VALOREM TAXES AND BONDS PROHIBITED. The authority may not:

(1) impose an ad valorem tax; or

(2) issue bonds. (V.A.C.S. Art. 1015g-6, Sec. 5(a) (part).)

Sec. 671.105. DEPOSITORY; ORDER TO DISBURSE. (a) The treasurer of the authority shall deposit money collected by the authority in a separate account in a bank or trust company.

(b) Money of the authority may be paid out on the warrant or

other order of the presiding officer of the board or another person designated by the authority. (V.A.C.S. Art. 1015g-6, Sec. 6.)

Sec. 671.106. AUDIT. (a) At least once a year, the authority shall have a certified public accountant conduct an audit of the authority's books, accounts, and other records. A copy of the audit shall be delivered to the city.

(b) If the authority does not have the required audit conducted, an auditor or accountant designated by the city may examine, at the expense of the authority, the accounts and books of the authority, including receipts, disbursements, contracts, leases, investments, and other matters relating to the authority's finances, operation, and affairs. (V.A.C.S. Art. 1015g-6, Sec. 7.)

[Chapters 672-680 reserved for expansion]

SUBTITLE C. TRADE ZONES

CHAPTER 681. FOREIGN TRADE ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 681.001. DEFINITION

Sec. 681.002. AUTHORIZATION SUBJECT TO FEDERAL LAW AND REGULATIONS

[Sections 681.003-681.050 reserved for expansion]

SUBCHAPTER B. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE ZONES BY CERTAIN ENTITIES

Sec. 681.051. DEFINITIONS

Sec. 681.052. GENERAL AUTHORITY FOR ELIGIBLE CORPORATION OR GOVERNMENTAL ENTITY

[Sections 681.053-681.100 reserved for expansion]

SUBCHAPTER C. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE ZONES BY CERTAIN JOINT BOARDS

Sec. 681.101. DEFINITION

Sec. 681.102. GENERAL AUTHORITY FOR JOINT BOARD

[Sections 681.103-681.150 reserved for expansion]

SUBCHAPTER D. SPECIFIC AUTHORITY FOR CERTAIN FOREIGN TRADE ZONES

Sec. 681.151. AMARILLO TRADE ZONE CORPORATION

Sec. 681.152. CITY OF AUSTIN OR DESIGNEE

Sec. 681.153. CITY OF BEAUMONT; JEFFERSON COUNTY; PORT OF BEAUMONT NAVIGATION DISTRICT; OR CERTAIN OTHER CORPORATIONS OR ENTITIES

Sec. 681.154. BRAZOS RIVER HARBOR NAVIGATION DISTRICT OR DESIGNEE

Sec. 681.155. BROWNSVILLE NAVIGATION DISTRICT

Sec. 681.156. CALHOUN-VICTORIA FOREIGN TRADE ZONE CORPORATION

Sec. 681.157. CITY OF CORPUS CHRISTI, PORT OF CORPUS CHRISTI AUTHORITY, OR DESIGNEE

Sec. 681.158. CITY OF DEL RIO OR DESIGNEE

Sec. 681.159. CITY OF EAGLE PASS OR DESIGNEE

Sec. 681.160. CITY OF EL PASO OR EL PASO TRADE ZONE CORPORATION

Sec. 681.161. CITY OF GALVESTON OR BOARD OF TRUSTEES OF GALVESTON WHARVES

Sec. 681.162. HARLINGEN TRADE ZONE CORPORATION

Sec. 681.163. CITY OF HOUSTON, HARRIS COUNTY, OR CERTAIN OTHER CORPORATIONS OR ENTITIES

Sec. 681.164. CITY OF HOUSTON, PORT OF HOUSTON AUTHORITY, OR HOUSTON FOREIGN-TRADE ZONE CORPORATION

Sec. 681.165. JEFFERSON COUNTY AIRPORT GOVERNING BODY

Sec. 681.166. CITY OF LAREDO

Sec. 681.167. CITY OF LUBBOCK OR DESIGNEE

Sec. 681.168. MCALLEN TRADE ZONE CORPORATION

Sec. 681.169. CITY OF MIDLAND OR DESIGNEE

Sec. 681.170. MIDLOTHIAN TRADE ZONE CORPORATION

Sec. 681.171. ORANGE COUNTY NAVIGATION AND PORT DISTRICT

Sec. 681.172. PORT OF PORT ARTHUR NAVIGATION DISTRICT

Sec. 681.173. SAN ANGELO TRADE ZONE CORPORATION

Sec. 681.174. CITY OF SAN ANTONIO OR DESIGNEE

Sec. 681.175. SATURN TRADE ZONE CORPORATION

Sec. 681.176. STARR COUNTY INDUSTRIAL FOUNDATION

Sec. 681.177. CITY OF WESLACO OR WESLACO DEVELOPMENT CORPORATION

Sec. 681.178. WESTPORT ECONOMIC DEVELOPMENT CORPORATION

CHAPTER 681. FOREIGN TRADE ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 681.001. DEFINITION. In this chapter, "foreign trade zone" has the meaning assigned to the term "zone" by the Foreign Trade Zones Act (19 U.S.C. Section 81a et seq.). (New.)

Sec. 681.002. AUTHORIZATION SUBJECT TO FEDERAL LAW AND REGULATIONS. An authorization under this chapter is subject to the

requirements of federal law and the regulations of the board established to carry out the provisions of the Foreign Trade Zones Act (19 U.S.C. Section 81a et seq.). (V.A.C.S. Arts. 1446.01, Sec. 2 (part); 1446.1 (part); 1446.2 (part); 1446.3 (part); 1446.4, Sec. 2 (part); 1446.5 (part); 1446.6 (part); 1446.7 (part); 1446.8, Sec. 2 (part); 1446.9 (part); 1446.10, Sec. 1 (part); 1446.11 (part); 1446.12 (part); 1446.13 (part); 1446.14 (part); 1446.15, Secs. 1 (part), 2 (part), 3 (part), 4 (part); 1446.16 (part); 1446.17 (part); 1446.18 (part); 1446.19 (part); 1446.20 (part); 1446.21 (part); 1446.22 (part); 1446.23 (part); 1446.24 (part); 1446.25 (part); 1446.26, Sec. 1 (part).)

[Sections 681.003-681.050 reserved for expansion]

SUBCHAPTER B. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE ZONES BY CERTAIN ENTITIES

Sec. 681.051. DEFINITIONS. In this subchapter:

(1) "Eligible corporation" means a corporation organized to establish, operate, and maintain a foreign trade zone.

(2) "Governmental entity" means:

(A) this state;

(B) a state agency;

(C) a county, municipality, or special district; or

(D) a combination of entities listed in Paragraphs (A)-(C). (V.A.C.S. Art. 1446.01, Sec. 1.)

Sec. 681.052. GENERAL AUTHORITY FOR ELIGIBLE CORPORATION OR GOVERNMENTAL ENTITY. (a) An eligible corporation or a governmental entity may:

(1) apply for and accept a grant of authority to establish, operate, and maintain a foreign trade zone and subzones; and

(2) take other actions necessary to establish, operate, and maintain the foreign trade zone and subzones.

(b) An applicant under Subsection (a) may select and describe the location of the foreign trade zone and subzones. (V.A.C.S. Art. 1446.01, Secs. 2 (part), 3.)

[Sections 681.053-681.100 reserved for expansion]

SUBCHAPTER C. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE ZONES BY CERTAIN JOINT BOARDS

Sec. 681.101. DEFINITION. In this subchapter, "joint board" means a joint board created by two or more municipalities with a combined population of more than one million under:

(1) Chapter 114, Acts of the 50th Legislature, Regular Session, 1947; or

(2) Section 22.074, Transportation Code. (V.A.C.S. Art. 1446.8, Sec. 1.)

Sec. 681.102. GENERAL AUTHORITY FOR JOINT BOARD. (a) A joint board may apply for and accept a permit, license, or other grant of authority to establish, operate, and maintain:

(1) one or more foreign trade zones, as Texas ports of entry under federal law, in any county in which the board's airport is located; and

(2) other subzones or other additions to an existing zone inside or outside that county.

(b) In operating and maintaining a foreign trade zone or

subzone under this subchapter, a joint board may exercise any power or authority necessary to establish, operate, and maintain the foreign trade zone or subzone in accordance with federal law, rules, and regulations. (V.A.C.S. Art. 1446.8, Secs. 2 (part), 3.)

[Sections 681.103-681.150 reserved for expansion]

SUBCHAPTER D. SPECIFIC AUTHORITY FOR CERTAIN FOREIGN TRADE ZONES

Sec. 681.151. AMARILLO TRADE ZONE CORPORATION. The Amarillo Trade Zone, Inc., organized under the laws of this state, with offices at or near Amarillo, Potter, and Randall Counties, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Amarillo, Potter, and Randall Counties; and

(2) other subzones. (V.A.C.S. Art. 1446.5 (part).)

Sec. 681.152. CITY OF AUSTIN OR DESIGNEE. The City of Austin, or a nonprofit corporation organized under the laws of this state and designated by the City of Austin, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Travis County; and

(2) other subzones. (V.A.C.S. Art. 1446.25 (part).)

Sec. 681.153. CITY OF BEAUMONT; JEFFERSON COUNTY; PORT OF BEAUMONT NAVIGATION DISTRICT; OR CERTAIN OTHER CORPORATIONS OR ENTITIES. (a) This section applies to:

(1) the City of Beaumont;

(2) the Beaumont Chamber of Commerce;

(3) Jefferson County;

(4) the Port of Beaumont Navigation District of

Jefferson County;

(5) the Beaumont Economic Development Foundation, a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), with offices at Beaumont, Jefferson County; or

(6) any other corporation organized under the laws of this state and designated by the Port of Beaumont Navigation District of Jefferson County.

(b) A corporation or entity listed in or described by Subsection (a) may apply for and accept a grant of authority to establish, operate, and maintain a foreign trade zone and subzones in Beaumont, Jefferson County, or another location in the portion of the Port Arthur Customs District located in this state. (V.A.C.S. Art. 1446.15, Sec. 1 (part).)

Sec. 681.154. BRAZOS RIVER HARBOR NAVIGATION DISTRICT OR DESIGNEE. The Brazos River Harbor Navigation District of Brazoria County, or a corporation organized under the laws of this state and designated by the Brazos River Harbor Navigation District of Brazoria County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to a port of entry in the Brazos River Harbor Navigation District of Brazoria County; and

(2) other subzones. (V.A.C.S. Art. 1446.18 (part).)

Sec. 681.155. BROWNSVILLE NAVIGATION DISTRICT. The Brownsville Navigation District may:

(1) apply for and accept a grant of authority to establish, operate, and maintain:

(A) a foreign trade zone at the Brownsville port of entry; and

(B) subzones of that zone; and

(2) on issuance of the grant of authority, take any action necessary or appropriate to establish, operate, or maintain the foreign trade zone and subzones. (V.A.C.S. Art. 1446.11 (part).)

Sec. 681.156. CALHOUN-VICTORIA FOREIGN TRADE ZONE CORPORATION. The Calhoun-Victoria Foreign Trade Zone, Inc., a corporation organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Calhoun County, Victoria County, or both; and

(2) other subzones. (V.A.C.S. Art. 1446.21 (part).)

Sec. 681.157. CITY OF CORPUS CHRISTI, PORT OF CORPUS CHRISTI AUTHORITY, OR DESIGNEE. The City of Corpus Christi, the Port of Corpus Christi Authority of Nueces County, or any other approved public agency designated by the City of Corpus Christi or the Port of Corpus Christi Authority of Nueces County may apply for and accept a grant of authority to establish, operate, and maintain a foreign trade zone and subzones. (V.A.C.S. Art. 1446.17 (part).)

Sec. 681.158. CITY OF DEL RIO OR DESIGNEE. The City of Del Rio, or a nonprofit corporation organized under the laws of this state and designated by the City of Del Rio, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Del Rio, Val Verde County;

and

(2) other subzones. (V.A.C.S. Art. 1446.13 (part).)

Sec. 681.159. CITY OF EAGLE PASS OR DESIGNEE. The City of Eagle Pass, or a nonprofit corporation organized under the laws of this state and designated by the City of Eagle Pass, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Eagle Pass, Maverick County; and

(2) other subzones. (V.A.C.S. Art. 1446.14 (part).)

Sec. 681.160. CITY OF EL PASO OR EL PASO TRADE ZONE CORPORATION. The City of El Paso or the El Paso Trade Zone, Inc., organized under the laws of this state, with offices at or near El Paso, El Paso County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to any port of entry in El Paso County; and

(2) other subzones. (V.A.C.S. Art. 1446.9 (part).)

Sec. 681.161. CITY OF GALVESTON OR BOARD OF TRUSTEES OF GALVESTON WHARVES. The City of Galveston or the Board of Trustees of the Galveston Wharves may:

(1) apply for and accept a grant of authority to establish, operate, and maintain:

(A) a foreign trade zone at the Galveston port of entry; and

(B) any subzones of that zone; and

(2) on issuance of the grant of authority, take any

action necessary or appropriate to establish, operate, and maintain the foreign trade zone and subzones. (V.A.C.S. Art. 1446.6 (part).)

Sec. 681.162. HARLINGEN TRADE ZONE CORPORATION. The Harlingen Trade Zone, Inc., organized under the laws of this state, with offices at or near Harlingen, Cameron County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to any port of entry in Cameron County; and

(2) other subzones. (V.A.C.S. Art. 1446.3 (part).)

Sec. 681.163. CITY OF HOUSTON, HARRIS COUNTY, OR CERTAIN OTHER CORPORATIONS OR ENTITIES. (a) This section applies to:

(1) the City of Houston;

(2) Harris County;

(3) a corporation organized under the laws of this state and designated by the City of Houston or Harris County; or

(4) any municipality or county located within five miles of a major space and aeronautics center.

(b) To establish, operate, and maintain a space facility to be named "Star Port," a corporation or entity listed in or described by Subsection (a) may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to or near a facility of the National Aeronautics and Space Administration in Harris County; and

(2) other subzones.

(c) The corporation or entity may apply for or adopt any

appropriate inducements for the establishment and operation of the foreign trade zone, including any appropriate or applicable tax abatement or tax exemption. (V.A.C.S. Art. 1446.26, Secs. 1 (part), 2.)

Sec. 681.164. CITY OF HOUSTON, PORT OF HOUSTON AUTHORITY, OR HOUSTON FOREIGN-TRADE ZONE CORPORATION. The City of Houston, the Port of Houston Authority, and the Houston Foreign-Trade Zone, Incorporated, a private corporation organized under the laws of this state, may each:

(1) apply for and accept a grant of authority to establish, operate, and maintain:

(A) a foreign trade zone at the Houston port of entry; and

(B) any subzones of that zone; and

(2) if the grant of authority is approved, take any action necessary to establish, operate, and maintain the foreign trade zone. (V.A.C.S. Art. 1446.7 (part).)

Sec. 681.165. JEFFERSON COUNTY AIRPORT GOVERNING BODY. The governing body of the Jefferson County Airport may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Jefferson County, which may include:

(A) land inside the boundaries of the airport; and

(B) private industrial land, not to exceed 1,000 acres, adjacent to the airport; and

(2) other subzones. (V.A.C.S. Art. 1446.15, Sec. 4

(part).)

Sec. 681.166. CITY OF LAREDO. The City of Laredo or an instrumentality of the City of Laredo may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at the Laredo port of entry; and

(2) other subzones. (V.A.C.S. Art. 1446.1 (part).)

Sec. 681.167. CITY OF LUBBOCK OR DESIGNEE. The City of Lubbock, or a corporation organized under the laws of this state and designated by the City of Lubbock, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to the United States Customs port of entry at Lubbock; and

(2) other subzones. (V.A.C.S. Art. 1446.22 (part).)

Sec. 681.168. MCALLEN TRADE ZONE CORPORATION. The McAllen Trade Zone, Inc., organized under the laws of this state, with offices at McAllen, Hidalgo County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at the McAllen port of entry; and

(2) other subzones, one of which may be located in Starr County. (V.A.C.S. Art. 1446.2 (part).)

Sec. 681.169. CITY OF MIDLAND OR DESIGNEE. The City of Midland, or a corporation organized under the laws of this state and designated by the City of Midland, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to the Midland

Regional Airport; and

(2) other subzones. (V.A.C.S. Art. 1446.23 (part).)

Sec. 681.170. MIDLOTHIAN TRADE ZONE CORPORATION. The Midlothian Trade Zone Corporation, organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Midlothian, Ellis County, adjacent to the port limits of the Dallas-Fort Worth port of entry; and

(2) other subzones in Ellis County. (V.A.C.S. Art. 1446.16 (part).)

Sec. 681.171. ORANGE COUNTY NAVIGATION AND PORT DISTRICT. The Orange County Navigation and Port District may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Orange County; and

(2) other subzones. (V.A.C.S. Art. 1446.15, Sec. 2 (part).)

Sec. 681.172. PORT OF PORT ARTHUR NAVIGATION DISTRICT. The Port of Port Arthur Navigation District of Jefferson County may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Jefferson County; and

(2) other subzones. (V.A.C.S. Art. 1446.15, Sec. 3 (part).)

Sec. 681.173. SAN ANGELO TRADE ZONE CORPORATION. The San Angelo Trade Zone, Inc., organized under the laws of this state, with offices at San Angelo, Tom Green County, may apply for and

accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in San Angelo, Tom Green County;

(2) a foreign trade zone at the San Angelo port of entry; and

(3) other subzones. (V.A.C.S. Art. 1446.4, Secs. 1, 2 (part).)

Sec. 681.174. CITY OF SAN ANTONIO OR DESIGNEE. (a) The City of San Antonio, or a nonprofit corporation organized under the laws of this state and designated by the City of San Antonio, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at or adjacent to any port of entry in Bexar County; and

(2) other subzones.

(b) After a nonprofit corporation has accepted a grant of authority to establish, operate, and maintain a foreign trade zone under this section, the City of San Antonio may not exercise any further control or supervision over the corporation with regard to:

(1) the naming of directors and officers of the corporation; or

(2) the corporation's internal management or organization. (V.A.C.S. Art. 1446.10, Secs. 1 (part), 2.)

Sec. 681.175. SATURN TRADE ZONE CORPORATION. The Saturn Trade Zone Corporation, a corporation organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at the location designated by General Motors Corporation in this state for the Saturn automobile production facility; and

(2) other subzones. (V.A.C.S. Art. 1446.19 (part).)

Sec. 681.176. STARR COUNTY INDUSTRIAL FOUNDATION. The Starr County Industrial Foundation, a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to promote the economic development of Starr County, with offices at Rio Grande City, Starr County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Rio Grande City, Starr County; and

(2) other subzones. (V.A.C.S. Art. 1446.12 (part).)

Sec. 681.177. CITY OF WESLACO OR WESLACO DEVELOPMENT CORPORATION. The City of Weslaco or the Weslaco Development Corporation, Incorporated, a corporation organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Weslaco, Hidalgo County; and

(2) other subzones. (V.A.C.S. Art. 1446.20 (part).)

Sec. 681.178. WESTPORT ECONOMIC DEVELOPMENT CORPORATION. The Westport Economic Development Corporation, organized as a nonprofit corporation under the laws of this state, with offices at El Paso, El Paso County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in or adjacent to the United States Customs port of entry at El Paso, El Paso County; and

(2) other subzones. (V.A.C.S. Art. 1446.24 (part).)

TITLE 99. MISCELLANEOUS COMMERCIAL PROVISIONS

CHAPTER 2001. DESTRUCTION OF DIE, MOLD, OR FORM

Sec. 2001.001. DEFINITIONS
Sec. 2001.002. NOTICE OF INTENT TO DESTROY DIE, MOLD, OR FORM NOT OWNED BY MOLDER
Sec. 2001.003. DESTRUCTION OF DIE, MOLD, OR FORM NOT OWNED BY MOLDER
Sec. 2001.004. TITLE EXTINGUISHED ON DESTRUCTION OF DIE, MOLD, OR FORM
Sec. 2001.005. LIMITATION ON LIABILITY OF MOLDER
Sec. 2001.006. DESTRUCTION OF DIE, MOLD, OR FORM OWNED BY MOLDER

CHAPTER 2001. DESTRUCTION OF DIE, MOLD, OR FORM

Sec. 2001.001. DEFINITIONS. In this chapter:

(1) "Molder" means an individual, firm, or corporation that:

(A) makes a die, mold, or form; or

(B) uses a die, mold, or form to make another product.

(2) "Owner" means an individual, firm, or corporation that holds title to a die, mold, or form. (Bus. & Com. Code, Sec. 35.41(a).)

Sec. 2001.002. NOTICE OF INTENT TO DESTROY DIE, MOLD, OR FORM NOT OWNED BY MOLDER. (a) After the third anniversary of the

date a die, mold, or form was last used or, if the die, mold, or form was never used, after the third anniversary of the date the die, mold, or form was made, a molder that is in possession of the die, mold, or form may send notice to the owner that the molder intends to destroy the die, mold, or form.

(b) The notice must be sent by registered mail, return receipt requested, to the last known address of the owner. (Bus. & Com. Code, Sec. 35.41(b).)

Sec. 2001.003. DESTRUCTION OF DIE, MOLD, OR FORM NOT OWNED BY MOLDER. A molder that sends a notice in accordance with Section 2001.002 may destroy the die, mold, or form if, before the 121st day after the date the owner receives the notice, the owner does not:

(1) take possession of the die, mold, or form; or

(2) make arrangements with the molder for the removal or continued storage of the die, mold, or form. (Bus. & Com. Code, Sec. 35.41(c).)

Sec. 2001.004. TITLE EXTINGUISHED ON DESTRUCTION OF DIE, MOLD, OR FORM. Title to a die, mold, or form destroyed in accordance with this chapter is extinguished at the time of the destruction. (Bus. & Com. Code, Sec. 35.41(d).)

Sec. 2001.005. LIMITATION ON LIABILITY OF MOLDER. A molder may not be held criminally or civilly liable for destroying a die, mold, or form if the molder complies with Sections 2001.002 and 2001.003. (Bus. & Com. Code, Sec. 35.41(e).)

Sec. 2001.006. DESTRUCTION OF DIE, MOLD, OR FORM OWNED BY MOLDER. This chapter does not prohibit a molder that is the owner of a die, mold, or form from destroying the die, mold, or form at any

time. (Bus. & Com. Code, Sec. 35.41(f).)

SECTION 2.02. CONFORMING AMENDMENT. Section 1.301(c), Business & Commerce Code, is amended to read as follows:

(c) If a transaction that is subject to this title is a "qualified transaction," as defined in Section 271.001 [~~35.51 of this code~~], then except as provided in Subsection (b) of this section, Chapter 271 [~~Section 35.51~~] governs the effect of an agreement by the parties that the law of a particular jurisdiction governs an issue relating to the transaction or that the law of a particular jurisdiction governs the interpretation or construction of an agreement relating to the transaction or a provision of the agreement.

SECTION 2.03. CONFORMING AMENDMENT. Section 2A.104(a), Business & Commerce Code, is amended to read as follows:

(a) A lease, although subject to this chapter, is also subject to any applicable:

(1) certificate of title statute of this state, including Chapter 501, Transportation Code, Chapter 31, Parks and Wildlife Code, and Subchapter E, Chapter 1201, Occupations Code;

(2) certificate of title statute of another jurisdiction (Section 2A.105); or

(3) consumer law of this state, both decisional and statutory, including, to the extent that they apply to a lease transaction:

(A) Titles 6, 7, 8, 9, and 14;

(B) Subtitle A, Title 11;

(C) Chapters 17, 53, 54, 72, 92, 101, 103, 305,

323, 522, 523, 602, 603, 604, and 2001;

(D) Section 65.017, Civil Practice and Remedies Code;

(E) Chapter 1201, Occupations Code; and

(F) Chapter 25, Transportation Code[~~, Chapters 17 and 35 of this code and Chapter 1201, Occupations Code~~].

SECTION 2.04. CONFORMING AMENDMENT. Section 7.103(d), Business & Commerce Code, is amended to read as follows:

(d) To the extent there is a conflict between Chapter 322 [~~43~~] and this chapter, this chapter governs.

SECTION 2.05. CONFORMING AMENDMENT. Section 9.311(a), Business & Commerce Code, is amended to read as follows:

(a) Except as otherwise provided in Subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9.310(a);

(2) the following statutes of this state: Chapter 501, Transportation Code, relating to the certificates of title for motor vehicles; Subchapter B-1, Chapter 31, Parks and Wildlife Code, relating to the certificates of title for vessels and outboard motors; Chapter 1201, Occupations Code, relating to the documents of title for manufactured homes; or Chapter 261 [~~Subchapter A, Chapter 35~~], relating to utility security instruments; or

(3) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

SECTION 2.06. CONFORMING AMENDMENT. Title 2, Agriculture Code, is amended by adding Chapter 17 to read as follows:

CHAPTER 17. SALE AND REGULATION OF CERTAIN FUEL MIXTURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.001. DEFINITIONS. In this chapter:

(1) "Automotive fuel rating" has the meaning assigned by 15 U.S.C. Section 2821.

(2) "Dealer" means a person who:

(A) is the operator of a service station or other retail outlet; and

(B) delivers motor fuel into the fuel tanks of motor vehicles or motor boats.

(3) "Distributor" has the meaning assigned by Section 162.001, Tax Code.

(4) "Jobber" means a person who purchases tax-paid gasoline for resale or distribution at wholesale.

(5) "Motor fuel" has the meaning assigned by Section 162.001, Tax Code.

(6) "Supplier" has the meaning assigned by Section 162.001, Tax Code.

(7) "Wholesaler" means a person who purchases tax-paid gasoline for resale or distribution at wholesale. (V.A.C.S. Art.

8614, Secs. 1, 3B (part), 4(a) (part).)

[Sections 17.002-17.050 reserved for expansion]

SUBCHAPTER B. SALE OR DELIVERY OF MOTOR FUEL

Sec. 17.051. NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE. (a) A dealer may not sell or offer for sale motor fuel from a motor fuel pump supplied by a storage tank into which motor fuel, in a mixture in which at least one percent of the mixture measured by volume is ethanol or methanol, has been delivered within the 60-day period preceding the date of sale or offer of sale unless the dealer prominently displays on the pump from which the mixture is sold a sign that complies with Subsection (b).

(b) A sign required by Subsection (a) must:

(1) be displayed on each face of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed;

(2) state "Contains Ethanol" or "Contains Methanol," as applicable;

(3) appear in contrasting colors with block letters at least one-half inch high and one-fourth inch wide; and

(4) be displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(c) If a motor fuel pump is supplied by a storage tank into which motor fuel containing at least 10 percent ethanol by volume or at least five percent methanol by volume is delivered in the 60-day period preceding the date of the sale or offer of sale, the sign required by Subsection (a) must also state the percentage of

ethanol or methanol by volume, to the nearest whole percent, of the motor fuel having the highest percentage of ethanol or methanol delivered into that storage tank during that period.

(d) On request by a motor fuel user, a dealer shall reveal:

(1) the percentage of ethanol contained in motor fuel being sold;

(2) the percentage of methanol contained in motor fuel being sold; and

(3) if the motor fuel contains methanol, the types and percentages of associated cosolvents contained in the motor fuel being sold.

(e) This section does not prohibit the posting of any other alcohol or additive information. Other alcohol or additive information and any relevant posting are subject to regulation by the commissioner. (V.A.C.S. Art. 8614, Secs. 3, 4(b).)

Sec. 17.052. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES. (a) Except as provided by Subsection (b), a distributor, supplier, wholesaler, or jobber of motor fuel may not deliver to an outlet in this state a motor fuel mixture that contains ethanol or methanol exceeding one percent by volume of the mixture unless, at the time of the delivery of the mixture, the person also delivers to the outlet receiving the delivery:

(1) signs required by Section 17.051 in a number sufficient for the dealer receiving the mixture to comply with that section; and

(2) a manifest, bill of sale, bill of lading, or other document evidencing delivery of the mixture, that:

(A) includes a statement containing:

(i) the percentage of ethanol or methanol contained in the mixture; and

(ii) the types and percentages of any associated cosolvents contained in the mixture; and

(B) evidences delivery of the signs required under Subdivision (1).

(b) Subsection (a) does not apply to a delivery made into the fuel supply tanks of a motor vehicle.

(c) The commissioner by rule may prescribe the form of the statement required by Subsection (a). (V.A.C.S. Art. 8614, Secs. 4(a) (part), (c).)

Sec. 17.053. RECORD OF DELIVERY DOCUMENTS; INSPECTION AUTHORIZED. (a) Each dealer shall keep a copy of each document required to be delivered to the dealer by Section 17.052 until the first anniversary of the delivery date. During the first 60 days following delivery of a fuel mixture subject to this chapter, the dealer shall keep a copy at the station or retail outlet where the motor fuel was delivered.

(b) Each distributor, supplier, wholesaler, and jobber of motor fuel shall keep at the person's principal place of business a copy of each document required to be delivered to the dealer by Section 17.052 until the first anniversary of the delivery date.

(c) The commissioner or an authorized representative of the commissioner may inspect documents described by this section.

(d) The commissioner by rule may prescribe:

(1) the manner of filing documents required to be kept

under this section; and

(2) the time, place, and manner of inspection of the documents. (V.A.C.S. Art. 8614, Sec. 5.)

Sec. 17.054. DOCUMENTS RELATING TO POSTING OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. (a) Each dealer shall keep for at least one year a copy of:

(1) each delivery ticket or letter of certification on which the dealer based a posting of the automotive fuel rating of motor fuel contained in a motor fuel pump;

(2) each delivery ticket or letter of certification that is required to be delivered to the dealer under 16 C.F.R. Part 306; and

(3) records of any automotive fuel rating determination made by the dealer under 16 C.F.R. Part 306.

(b) Each distributor or supplier shall keep for at least one year at the distributor's or supplier's principal place of business a copy of each delivery ticket or letter of certification required to be delivered by the distributor or supplier to a dealer in this state under 16 C.F.R. Part 306.

(c) The commissioner or an authorized representative of the commissioner may inspect a document required to be kept under this section. (V.A.C.S. Art. 8614, Sec. 5A.)

Sec. 17.055. SALE OF MOTOR FUEL WITH INACCURATE AUTOMOTIVE FUEL RATING. (a) A dealer may not sell or offer for sale from a motor fuel pump motor fuel that has an automotive fuel rating lower than the rating for that motor fuel posted on the pump.

(b) A distributor or supplier of motor fuel may not deliver

or transfer to a dealer in this state motor fuel that has an automotive fuel rating lower than the certification of the rating the distributor or supplier is required to make to the dealer under federal law. (V.A.C.S. Art. 8614, Secs. 3A, 3B.)

[Sections 17.056-17.100 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 17.101. COPIES OF DOCUMENTS; DELIVERY TO FEDERAL GOVERNMENT. (a) The commissioner, an authorized representative of the commissioner, or the attorney general may copy any manifest, bill of sale, bill of lading, delivery ticket, letter of certification, or other document that the commissioner or attorney general is entitled to inspect under this chapter.

(b) The commissioner, an authorized representative of the commissioner, or the attorney general may deliver a copy of a document described by Subsection (a) to the federal government for the purpose of prosecuting a person for a violation of federal law relating to the sale or transfer of motor fuel. (V.A.C.S. Art. 8614, Sec. 11.)

Sec. 17.102. TESTING; RULES RELATING TO TESTING FREQUENCY. To determine compliance with the standards and enforce rules adopted under Sections 17.051, 17.052, 17.053, 17.055, and 17.103, the commissioner or an authorized representative of the commissioner may test any motor fuel sold in this state, regardless of the existence of a complaint about the fuel. This section does not prohibit the commissioner from adopting rules relating to the frequency of testing motor fuels. In adopting the rules, the commissioner shall consider:

(1) the nature of the violation;

(2) the history of past violations; and

(3) available funds under Section 17.104(d). (V.A.C.S. Art. 8614, Sec. 2.)

Sec. 17.103. AUTHORITY OF COMMISSIONER TO LIMIT APPLICABILITY OF LAW. If the commissioner determines that certain types of motor fuel, such as diesel or liquefied petroleum gas, are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation of deliveries of those types of motor fuel under this chapter, the commissioner may limit the application of Sections 17.051 and 17.052 to motor fuels sold in sufficient quantity to warrant regulation. (V.A.C.S. Art. 8614, Sec. 4(d).)

Sec. 17.104. RULES; FEES. (a) The commissioner may adopt rules consistent with this chapter for the regulation of the sale of motor fuels containing ethanol and methanol.

(b) The commissioner by rule may impose a fee for testing, inspection, or the performance of other services provided as determined necessary by the commissioner in the administration of this chapter. A fee imposed under this subsection shall be collected from each dealer on a periodic basis determined by the commissioner without regard to whether the motor fuel is subject to regulation under this chapter.

(c) The commissioner by rule shall prescribe the form for reporting and remitting the fees imposed under this section.

(d) Fees collected under this section may be used only to administer and enforce this chapter. (V.A.C.S. Art. 8614, Secs.

9(a), (b), (e).)

[Sections 17.105-17.150 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT

Sec. 17.151. CONTRACT FOR ENFORCEMENT. The commissioner may contract for the enforcement of this chapter after due notice. (V.A.C.S. Art. 8614, Sec. 10.)

Sec. 17.152. CIVIL ACTION. (a) If a dealer or a distributor, supplier, wholesaler, or jobber of motor fuel violates Section 17.051, 17.052, 17.053, 17.054, or 17.055, a motor fuel user who purchased the motor fuel and sustained damages or who has a complaint about the product may bring an action against the dealer, distributor, supplier, wholesaler, or jobber.

(b) The action may be brought, without regard to the specific amount of damages, in the district court in any county in which:

(1) the dealer, distributor, supplier, wholesaler, or jobber transacts business; or

(2) the dealer resides.

(c) The court shall award to a motor fuel user who prevails in an action under this section:

(1) the amount of actual damages;

(2) equitable relief as determined by the court to be necessary to remedy the effects of the violation, including a declaratory judgment, permanent injunctive relief, and temporary injunctive relief; and

(3) court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(d) In addition to the remedies provided under Subsection (c), on finding that the defendant wilfully or knowingly violated Section 17.051, 17.052, or 17.053, the trier of fact shall award not more than three times the amount of actual damages.

(e) A violation of Section 17.051, 17.052, 17.053, 17.054, or 17.055 also constitutes a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(f) An action alleging a violation of Section 17.051, 17.052, 17.053, 17.054, or 17.055 must be commenced and prosecuted not later than the second anniversary of the date on which the cause of action accrues. (V.A.C.S. Art. 8614, Sec. 6.)

Sec. 17.153. CIVIL PENALTY. A dealer, distributor, supplier, wholesaler, or jobber who violates Section 17.051, 17.052, 17.053, 17.054, or 17.055 is liable to this state for a civil penalty of not less than $200 and not more than $10,000. (V.A.C.S. Art. 8614, Sec. 7.)

Sec. 17.154. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly violates Section 17.051, 17.052, 17.053, 17.054, or 17.055 or a rule adopted by the commissioner to enforce or implement those sections.

(b) A person commits an offense if the person knowingly:

(1) refuses to permit a person authorized by Section 17.102 to test any motor fuel sold or held for sale in this state;

(2) refuses to permit inspection of any document required to be kept or delivered by this chapter on request of a person authorized to inspect the documents under Section 17.053 or 17.054; or

(3) mutilates, destroys, secretes, forges, or falsifies any document, record, report, or sign required to be delivered, kept, filed, or posted by this chapter or any rule adopted by the commissioner to enforce this chapter.

(c) An offense under Subsection (a) is a Class C misdemeanor.

(d) An offense under Subsection (b) is a Class B misdemeanor.

(e) The commissioner or the authorized representative of the commissioner may request the appropriate prosecuting attorney to prosecute a violation of this chapter. (V.A.C.S. Art. 8614, Sec. 8.)

Sec. 17.155. ADMINISTRATIVE PENALTY. (a) The commissioner may impose an administrative penalty against a person regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. Except as otherwise provided by this section, an administrative penalty is imposed and collected in the manner provided by Section 12.020.

(b) The penalty for a violation of this chapter or a rule or order adopted under this chapter may not exceed $500 a day for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An employee of the department designated by the commissioner to act under this section who determines that a violation has occurred may issue to the commissioner a report stating the facts on which the determination is based and the designated employee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Not later than the 14th day after the date the report is issued, the designated employee shall give written notice of the report to the person charged with the violation. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) include a statement of the amount of the recommended penalty; and

(3) inform the person charged that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date the person charged receives the notice, the person:

(1) in writing may accept the determination and recommended penalty of the designated employee; or

(2) may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person charged with the violation accepts the determination and recommended penalty of the designated employee, the commissioner by order shall approve the determination and impose the recommended penalty.

(h) If the person charged requests a hearing or fails to respond timely to the notice, the designated employee shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision as to the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find a violation has occurred and impose a penalty or may find that no violation has occurred.

(i) The notice of the commissioner's order under Chapter 2001, Government Code, given to the person charged with the violation must include a statement of the right of the person to judicial review of the order. (V.A.C.S. Art. 8614, Secs. 7A(a), (b), (c), (d), (e), (f), (g), (h), (i).)

SECTION 2.07. CONFORMING AMENDMENT. Section 1.002(4), Business Organizations Code, is amended to read as follows:

(4) "Assumed name" means a name adopted for use by a person. The term includes an assumed name filed under Chapter 71

[~~36~~], Business & Commerce Code.

SECTION 2.08. CONFORMING AMENDMENT. Section 5.001(a), Business Organizations Code, is amended to read as follows:

(a) The filing of a certificate of formation by a filing entity under this code, an application for registration by a foreign filing entity under this code, or an application for reservation or registration of a name under this chapter does not authorize the use of a name in this state in violation of a right of another under:

(1) the Trademark Act of 1946, as amended (15 U.S.C. Section 1051 et seq.);

(2) Chapter 16 or 71 [~~36~~], Business & Commerce Code; or

(3) common law.

SECTION 2.09. CONFORMING AMENDMENT. Section 5.051, Business Organizations Code, is amended to read as follows:

Sec. 5.051. ASSUMED NAME. A domestic entity or a foreign entity having authority to transact business in this state may transact business under an assumed name by filing an assumed name certificate in accordance with Chapter 71 [~~36~~], Business & Commerce Code. The requirements of this subchapter do not apply to an assumed name set forth in an assumed name certificate filed under that chapter.

SECTION 2.10. CONFORMING AMENDMENT. Section 15.020(d), Civil Practice and Remedies Code, is amended to read as follows:

(d) This section does not apply to an action if:

(1) the agreement described by this section was unconscionable at the time that it was made;

(2) the agreement regarding venue is voidable under Chapter 272 [~~Section 35.52~~], Business & Commerce Code; or

(3) venue is established under a statute of this state other than this title.

SECTION 2.11. CONFORMING AMENDMENT. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 43 to read as follows:

CHAPTER 43. PRINCIPAL AND SURETY

Sec. 43.001. DEFINITION. In this chapter, "surety" includes:

(1) an endorser, a guarantor, and a drawer of a draft that has been accepted; and

(2) every other form of suretyship, whether created by express contract or by operation of law. (Bus. & Com. Code, Sec. 34.01.)

Sec. 43.002. SUIT ON ACCRUED RIGHT OF ACTION. (a) When a right of action accrues on a contract for the payment of money or performance of an act, a surety on the contract may, by written notice, require the obligee to without delay bring a suit on the contract.

(b) A surety who provides notice to an obligee under Subsection (a) is discharged from all liability on the contract if the obligee:

(1) is not under a legal disability; and

(2) does not:

(A) bring a suit on the contract during:

(i) the first term of court after receipt of

the notice; or

(ii) the second term of court if good cause is shown for the delay; or

(B) prosecute the suit to judgment and execution. (Bus. & Com. Code, Sec. 34.02.)

Sec. 43.003. PRIORITY OF EXECUTION. (a) If a judgment granted against two or more defendants finds a suretyship relationship between or among the defendants, the court shall order the sheriff to levy the execution in the following order:

(1) against the principal's property located in the county where the judgment was granted;

(2) if the sheriff cannot find enough of the principal's property in that county to satisfy the execution, against as much of the principal's property as the sheriff finds; and

(3) against as much of the surety's property as is necessary to make up the balance of the amount shown in the writ of execution.

(b) The clerk shall note the order to the sheriff on the writ of execution. (Bus. & Com. Code, Sec. 34.03.)

Sec. 43.004. SUBROGATION RIGHTS OF SURETY. (a) A judgment is not discharged by a surety's payment of the judgment in whole or part if the payment:

(1) is compelled; or

(2) if made voluntarily, is applied to the judgment because of the suretyship relationship.

(b) A surety who pays on a judgment as described by

Subsection (a) is subrogated to all of the judgment creditor's rights under the judgment. A subrogated surety is entitled to execution on the judgment against:

(1) the principal's property for the amount of the surety's payment, plus interest and costs; and

(2) if there is more than one surety, both the principal's property and the property of the cosurety or cosureties for the amount by which the surety's payment exceeds the surety's proportionate share of the judgment, plus interest and costs.

(c) A subrogated surety seeking execution on the judgment under Subsection (b) shall apply for execution to the clerk or court. The execution shall be levied, collected, and returned as in other cases. (Bus. & Com. Code, Sec. 34.04.)

Sec. 43.005. OFFICER TREATED AS SURETY. (a) An officer has the rights of a surety provided by Section 43.004 if the officer is compelled to pay a judgment in whole or part because of the officer's default.

(b) An officer does not have the rights of a surety provided by Section 43.004 if the officer:

(1) does not pay over money collected; or

(2) wastes property that is levied on by the officer or is in the officer's possession. (Bus. & Com. Code, Sec. 34.05.)

SECTION 2.12. CONFORMING AMENDMENT. Subchapter B, Chapter 65, Civil Practice and Remedies Code, is amended by adding Section 65.017 to read as follows:

Sec. 65.017. CIGARETTE SELLER, DISTRIBUTOR, OR MANUFACTURER. In addition to any other remedy provided by law, a

person may bring an action in good faith for appropriate injunctive relief if the person sells, distributes, or manufactures cigarettes and sustains a direct economic or commercial injury as a result of a violation of:

(1) Section 48.015, Penal Code; or

(2) Section 154.0415, Tax Code. (Bus. & Com. Code, Sec. 35.49.)

SECTION 2.13. CONFORMING AMENDMENT. Article 18.18(g), Code of Criminal Procedure, is amended to read as follows:

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code;

(4) "dog-fighting equipment" means:

(A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B) equipment used for transporting a fighting dog, including any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C) equipment used to promote or advertise an

exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or

(D) a dog trained, being trained, or intended to be used to fight with another dog;

(5) "obscene device" and "obscene" have the meanings assigned by Section 43.21, Penal Code;

(6) "re-encoder" has the meaning assigned by Section 522.001 [~~35.60~~], Business & Commerce Code;

(7) "scanning device" has the meaning assigned by Section 522.001 [~~35.60~~], Business & Commerce Code; and

(8) "obscene material" and "child pornography" include digital images and the media and equipment on which those images are stored.

SECTION 2.14. CONFORMING AMENDMENT. Article 59.01(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state

jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code; or

(viii) a Class B misdemeanor under Chapter 522 [~~Section 35.60~~], Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the

commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 2.15. CONFORMING AMENDMENT. Section 14.107(a), Finance Code, is amended to read as follows:

(a) The finance commission shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, and Chapters 371, 392, and 394 and under Chapters 51, 302, 601, and 621 [~~38-41~~], Business & Commerce Code.

SECTION 2.16. CONFORMING AMENDMENT. Section 303.301, Finance Code, is amended to read as follows:

Sec. 303.301. AGREEMENT TO WHICH CHAPTER DOES NOT APPLY. The rate ceilings provided by this chapter do not apply to an agreement:

(1) under which credit is extended by the seller, or an owner, subsidiary, or corporate affiliate of the seller, for a transaction governed by Chapter 601 [~~39~~], Business & Commerce Code; and

(2) that is secured by a lien on the obligor's homestead.

SECTION 2.17. CONFORMING AMENDMENT. Section 345.001(6), Finance Code, is amended to read as follows:

(6) "Retail installment contract" means one or more

instruments entered into in this state that evidence a secured or unsecured retail installment transaction. The term includes a chattel mortgage, security agreement, and conditional sale contract and a document that evidences a bailment or lease described by Section 345.068, but does not include:

(A) an instrument that is a retail charge agreement;

(B) an instrument reflecting a sale under a retail charge agreement; or

(C) a rental-purchase agreement that complies with Chapter 92 [~~Subchapter F, Chapter 35~~], Business & Commerce Code.

SECTION 2.18. CONFORMING AMENDMENT. Section 345.158, Finance Code, is amended to read as follows:

Sec. 345.158. RETAIL CHARGE AGREEMENT TO WHICH SUBCHAPTER DOES NOT APPLY. This subchapter does not apply to a retail charge agreement that:

(1) is a home solicitation transaction that is subject to Chapter 601 [~~39~~], Business & Commerce Code;

(2) is secured by a lien on the obligor's homestead; and

(3) provides for credit that is extended by the retail seller or the seller's owner, subsidiary, or corporate affiliate.

SECTION 2.19. CONFORMING AMENDMENT. Section 371.301, Finance Code, is amended to read as follows:

Sec. 371.301. COMMISSIONER'S ENFORCEMENT POWERS. For purposes of enforcing this chapter, the commissioner:

(1) has the powers granted to the commissioner under Chapter 14;

(2) may exercise those powers in the same manner as those powers may be exercised under:

(A) Chapters 14, 392, and 394;

(B) Subtitle B, Title 4; and

(C) Chapters 51, 302, 601, and 621 [~~38-41~~], Business & Commerce Code; and

(3) has any authority granted the commissioner by other law.

SECTION 2.20. CONFORMING AMENDMENT. Section 552.141, Government Code, as added by Chapter 401, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 552.141. EXCEPTION: TEXAS NO-CALL LIST. The Texas no-call list created under Subchapter B [~~C~~], Chapter 304 [~~44~~], Business & Commerce Code, and any information provided to or received from the administrator of the national do-not-call registry maintained by the United States government, as provided by Sections 304.051 and 304.056 [~~Section 44.101~~], Business & Commerce Code, are [~~is~~] excepted from the requirements of Section 552.021.

SECTION 2.21. CONFORMING AMENDMENT. Section 982.304, Insurance Code, is amended to read as follows:

Sec. 982.304. SAME OR DECEPTIVELY SIMILAR NAME. A foreign or alien insurance company may not be denied permission to engage in the business of insurance in this state because the name of the company is the same as or deceptively similar to the name of a domestic corporation existing under the laws of this state or of

another foreign or alien insurance company authorized to engage in the business of insurance in this state if the company desiring to engage in the business of insurance in this state:

(1) files with the department and with any county clerk as provided by Subchapter B or C, Chapter 71 [~~Section 36.10 or 36.11~~], Business & Commerce Code, an assumed name certificate stating a name permitted under the laws of this state; and

(2) does not engage in any business in this state except under the assumed name.

SECTION 2.22. CONFORMING AMENDMENT. Section 2701.002, Insurance Code, is amended to read as follows:

Sec. 2701.002. CONSTRUCTION OF CHAPTER 601 [~~39~~], BUSINESS & COMMERCE CODE. Chapter 601 [~~39~~], Business & Commerce Code, is a consumer protection law when construed in connection with a title insurance policy issued in this state.

SECTION 2.23. CONFORMING AMENDMENT. Section 191.009(c), Local Government Code, is amended to read as follows:

(c) For purposes of this section:

(1) an instrument is an electronic record, as defined by Section 322.002 [~~43.002~~], Business & Commerce Code; and

(2) "electronic document" has the meaning assigned by Section 15.002, Property Code.

SECTION 2.24. CONFORMING AMENDMENT. Section 195.002(e), Local Government Code, is amended to read as follows:

(e) Notwithstanding Sections 322.017 and 322.018 [~~43.017 and 43.018~~], Business & Commerce Code, a county clerk may accept any filed electronic record, as defined by Section 322.002 [~~43.002~~],

Business & Commerce Code, or electronic document and may electronically record that electronic document or record if the filing and recording of that electronic document or record complies with rules adopted by the commission under this section.

SECTION 2.25. CONFORMING AMENDMENT. Section 212.158, Local Government Code, is amended to read as follows:

Sec. 212.158. EFFECT ON OTHER LAW. This subchapter does not prohibit the exhibition, play, or necessary incidental action thereto of a sweepstakes not prohibited by Chapter 622 [~~43~~], Business & Commerce Code[~~, as added by Chapter 1119, Acts of the 77th Legislature, Regular Session, 2001~~].

SECTION 2.26. CONFORMING AMENDMENT. Section 113.002, Natural Resources Code, is amended to read as follows:

Sec. 113.002. DEFINITIONS. Except as provided by Subchapter M, in [~~In~~] this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(3) "Employee" means any individual who renders or performs any services or labor for compensation and includes individuals hired on a part-time or temporary basis or a full-time or permanent basis including an owner-employee.

(4) "Liquefied petroleum gas," "LPG," or "LP-gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(5) "Container" means any receptacle designed for the transportation or storage of LPG or any receptacle designed for the

purpose of receiving injections of LPG for use or consumption by or through an LPG system.

(6) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(7) "LPG system" means all piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LPG.

(8) "Transport system" means any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(9) "Transfer system" means all piping, fittings, valves, and equipment utilized in dispensing LPG between containers.

(10) "Transport" means any bobtail or semitrailer equipped with one or more containers.

(11) "Subframing" means the attachment of supporting structural members to the pads of a container but does not include welding directly to or on the container.

(12) "Representative" means the individual designated to the commission by a license applicant or licensee as the principal person in authority and, in the case of a licensee other than a category "P" licensee, actively supervising the conduct of the licensee's LPG activities.

(13) "Person" means any individual, partnership, firm, corporation, association, or any other business entity, a

state agency or institution, county, municipality, school district, or other governmental subdivision.

(14) "Registrant" means any person exempt from the licensing requirements, as established by rule pursuant to Section 113.081 of this code, who is required to register with the commission, any person qualified by examination by the commission, or any person who applies for registration with the commission.

(15) "Intermodal portable tank" means a portable tank built according to the United States Department of Transportation specifications and designed primarily for international intermodal use.

(16) "Intermodal container" means a freight container designed and constructed for interchangeable use in two or more modes of transport.

(17) "Mobile fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(18) "Mobile fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(19) "Motor fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an engine used to propel the vehicle.

(20) "Motor fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an engine

used to propel the vehicle.

(21) "Portable cylinder" means a receptacle constructed to United States Department of Transportation specifications, designed to be moved readily, and used for the storage of LPG for connection to an appliance or an LPG system. The term does not include a cylinder designed for use on a forklift or similar equipment.

SECTION 2.27. CONFORMING AMENDMENT. Chapter 113, Natural Resources Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. LIQUEFIED PETROLEUM GAS CONTAINERS

Sec. 113.401. DEFINITIONS. In this subchapter:

(1) "Liquefied petroleum gas" means the hydrocarbon product extracted from natural gas or crude oil and commonly known as butane or propane.

(2) "Person" means an individual, association, or corporation. (V.A.C.S. Art. 8610a, Sec. (a).)

Sec. 113.402. NOTICE TO PROSPECTIVE PURCHASERS AND USERS. A person in the business of leasing or selling liquefied petroleum gas containers shall give to each prospective purchaser or user of a container a written notice of the purchase or use options provided by that business, including, as applicable, options to purchase, lease, or lease-purchase. The notice must include a written statement that other persons in the business of leasing or selling liquefied petroleum gas containers may provide purchase or use options that include purchase, lease, and lease-purchase. (V.A.C.S. Art. 8610a, Sec. (b).)

Sec. 113.403. SUPPLY CONTRACT REQUIREMENT. If a person in the business of leasing or selling liquefied petroleum gas containers signs a supply contract with another person, a separate agreement on the face of the supply contract must state that the supplier gave to the user, before the user signed the supply contract, the notice required by Section 113.402. (V.A.C.S. Art. 8610a, Sec. (c).)

Sec. 113.404. FILLING OR REFILLING OF CONTAINER BY NONOWNER. A person who is not the owner of a liquefied petroleum gas container may fill or refill the container if the person who occupies the premises where the container is located:

(1) requests the service; and

(2) signs a written request stating that:

(A) an emergency exists; and

(B) the owner is unavailable to fill or refill the container, as applicable. (V.A.C.S. Art. 8610a, Sec. (e).)

Sec. 113.405. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this subchapter.

(b) A person who is not the owner of a liquefied petroleum gas container commits an offense if the person:

(1) except as provided by Section 113.404, without written authorization of the owner of the container sells, fills, refills, delivers or permits to be delivered, or uses the container for any purpose;

(2) obtains a written request under Section 113.404 through misrepresentation; or

(3) defaces, removes, or conceals a name, mark,

initial, or device on the container without the written consent of the owner of the container.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $25 and not more than $200. (V.A.C.S. Art. 8610a, Secs. (d), (f), (g); Art. 8611 (part).)

SECTION 2.28. CONFORMING AMENDMENT. Article 8611, Revised Statutes, is amended to read as follows:

Art. 8611. PUNISHMENT. Any person who shall knowingly violate any of the provisions of Articles 8601 through and inclusive of Article 8610 [~~8610a~~], Revised Statutes, shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

SECTION 2.29. CONFORMING AMENDMENT. Section 1101.0055, Occupations Code, is amended to read as follows:

Sec. 1101.0055. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. A service contract that a license holder enters into for services governed by this chapter is not a good or service governed by Chapter 601 [~~39~~], Business & Commerce Code.

SECTION 2.30. CONFORMING AMENDMENT. Section 1303.0035, Occupations Code, is amended to read as follows:

Sec. 1303.0035. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. The sale of a residential service contract governed by this chapter is not a good or service governed by Chapter 601 [~~39~~], Business & Commerce Code.

SECTION 2.31. CONFORMING AMENDMENT. Section 1951.254(f),

Occupations Code, is amended to read as follows:

(f) The information sheet must include:

(1) the names and telephone numbers of the board, the Department of Agriculture, and the [~~Texas~~] Department of State Health Services;

(2) the telephone number of any pesticide hotline established by a state or federal agency or by a state university;

(3) a statement of a consumer's rights under Chapter 601 [~~39~~], Business & Commerce Code, to cancel a home solicitation transaction; and

(4) information concerning the availability of any pretreatment inspection service that may be provided by the board under Section 1951.210.

SECTION 2.32. CONFORMING AMENDMENT. Section 2102.002, Occupations Code, is amended to read as follows:

Sec. 2102.002. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) a contract:

(A) between a performing rights society and a broadcaster licensed by the Federal Communications Commission; or

(B) with a cable operator, programmer, or other transmission service;

(2) conduct engaged in for the enforcement of Section 641.054 and, to the extent applicable, Section 641.056 [~~35.94~~], Business & Commerce Code; or

(3) the owner of a copyright of a motion picture or an audiovisual work.

SECTION 2.33. CONFORMING AMENDMENT. Chapter 2301, Occupations Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. REGULATION OF CERTAIN COMMERCIAL USES OF MOTOR VEHICLES

Sec. 2301.851. CERTAIN CHARGES INCLUDED IN CUSTOMER AGREEMENT. (a) A person required to register under Section 152.065, Tax Code, may include in a customer agreement subject to Subsection (b) a separate charge for the proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on the person's vehicle fleet.

(b) A person who includes the charge must do so:

(1) on a nondiscriminatory basis; and

(2) in each agreement other than an agreement that is exempt from the tax imposed under Section 152.026, Tax Code. (V.A.C.S. Art. 9026a, Secs. (a), (b).)

Sec. 2301.852. USE OR RETENTION OF SALVAGE MOTOR VEHICLE. (a) Notwithstanding Section 2301.002, in this section, "certificate of title," "motor vehicle," and "owner" have the meanings assigned by Section 501.002, Transportation Code.

(b) An owner required to register under Section 152.065, Tax Code, may not use or retain for use for a usual commercial purpose of the owner a motor vehicle that has been issued a certificate of title under Section 501.100, Transportation Code. (V.A.C.S. Art. 9026b, Secs. (a), (c).)

Sec. 2301.853. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 9026a, Sec. (c); Art. 9026b, Sec. (b).)

SECTION 2.34. CONFORMING AMENDMENT. Section 11.001(a), Property Code, is amended to read as follows:

(a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located. However, if such an instrument grants a security interest by a utility as defined in Section 261.001 [~~35.01~~], Business & Commerce Code, the instrument may be recorded as required by Sections 261.004 and 261.006 [~~Section 35.02~~] of that code, and if such instrument is so recorded, the lien and the secured interest created by such instrument shall be deemed perfected for all purposes.

SECTION 2.35. CONFORMING AMENDMENT. Sections 72.1016(a) and (d), Property Code, are amended to read as follows:

(a) This section applies to a stored value card, as defined by Section 604.001 [~~35.42(a)~~], Business & Commerce Code, other than a card:

(1) to which Chapter 604 [~~Section 35.42~~], Business & Commerce Code, does not apply by operation of Sections 604.002(1)(A) and (C) and 604.002(2)-(5) of that code [~~Subsection (b) of that section~~]; or

(2) that is linked to and draws its value solely from a deposit account subject to Chapter 73.

(d) A person may charge a fee against a stored value card as provided by Chapter 604 [~~Section 35.42~~], Business & Commerce Code. A fee may not be charged against a stored value card after the card

is presumed abandoned under this section.

SECTION 2.36. CONFORMING AMENDMENT. Section 221.024(a), Property Code, is amended to read as follows:

(a) The commission may prescribe and publish forms and adopt rules necessary to carry out the provisions of this chapter and may suspend or revoke the registration of any developer, place on probation the registration of a developer that has been suspended or revoked, reprimand a developer, impose an administrative penalty of not more than $10,000, or take any other disciplinary action authorized by this chapter if, after notice and hearing, the commission determines that a developer has materially violated this chapter, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), or the Contest and Gift Giveaway Act (Chapter 621 [~~40~~], Business & Commerce Code).

SECTION 2.37. CONFORMING AMENDMENT. Sections 221.031(a) through (d), Property Code, are amended to read as follows:

(a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that the advertisement violates this chapter or Chapter 621 [~~40~~], Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th day after the date the commission makes its determination.

The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

(b) Any advertisement that contains a promotion in connection with the offering of a timeshare interest must comply with Chapter 621 [~~40~~], Business & Commerce Code.

(c) As provided by Subsections (d) and (e), an advertisement that contains a promotion in connection with the offering of a timeshare interest must include, in addition to any disclosures required under Chapter 621 [~~40~~], Business & Commerce Code, the following:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer of the timeshare property; and

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property, excluding the developer or an affiliate or subsidiary of the developer.

(d) An advertisement containing the disclosures required by Chapter 621 [~~40~~], Business & Commerce Code, and Subsection (c) must be provided in writing or electronically:

(1) at least once before a scheduled sales presentation; and

(2) in a reasonable period before the scheduled sales presentation to ensure that the recipient receives the disclosures before leaving to attend the sales presentation.

SECTION 2.38. CONFORMING AMENDMENT. Section 25.07(b), Tax Code, is amended to read as follows:

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Subchapter C, Chapter 681, Business & Commerce Code [~~Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes)~~];

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does

not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D)(i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by the same incorporated city or town which owns the airport;

(4) the interest is in a part of:

(A) a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(B) a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by an incorporated city or town as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission;

(5) the interest involves only the right to use the property for grazing or other agricultural purposes;

(6) the property is owned by the Texas National

Research Laboratory Commission or by a corporation formed by the Texas National Research Laboratory Commission under Section 465.008(g), Government Code, and is used or is useful in connection with an eligible undertaking as defined by Section 465.021, Government Code; or

(7) the property is:

(A) owned by a municipality, a public port, or a navigation district created or operating under Section 59, Article XVI, Texas Constitution, or under a statute enacted under Section 59, Article XVI, Texas Constitution; and

(B) used as an aid or facility incidental to or useful in the operation or development of a port or waterway or in aid of navigation-related commerce.

SECTION 2.39. CONFORMING AMENDMENT. Title 3, Transportation Code, is amended by adding Chapter 25 to read as follows:

CHAPTER 25. NOTICE OF CONSTRUCTION OF WIRELESS COMMUNICATION FACILITY

Sec. 25.001. DEFINITION. In this chapter, "wireless communication facility" means an equipment enclosure, antenna, antenna support structure, and any associated facility used for receiving or sending a radio frequency, microwave, or other signal for a commercial communications purpose. (Bus. & Com. Code, Sec. 35.111.)

Sec. 25.002. NOTICE OF CONSTRUCTION. (a) A person proposing to construct a wireless communication facility that is taller than 100 feet shall, not later than the 30th day before the

date the construction begins, mail a letter to:

(1) any airport located within three miles of the proposed facility location; and

(2) the Texas Agricultural Aviation Association.

(b) The letter must state:

(1) the legal description of the proposed site of construction, including a graphic depiction showing:

(A) the location, height, longitude, latitude, pad size, roadway access, and proposed use of the wireless communication facility; and

(B) the location of any guy wires;

(2) at a minimum, the name, phone number, electronic mail address, if any, and mailing address of the person proposing construction of the wireless communication facility; and

(3) a phone number that is operational 24 hours a day, seven days a week, for emergency purposes. (Bus. & Com. Code, Sec. 35.112.)

Sec. 25.003. INAPPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) a structure the main purpose of which is to provide electric service;

(2) a wireless communication facility:

(A) used by an entity only for internal communications;

(B) constructed by a municipality;

(C) used for emergency communications; or

(D) installed for colocation purposes;

(3) a radio or television reception antenna;

(4) a satellite or microwave parabolic antenna not used by a wireless communication service provider;

(5) a receive-only antenna;

(6) an antenna owned and operated by a federally licensed amateur radio station operator;

(7) a cable television company facility;

(8) a radio or television broadcasting facility; or

(9) a colocation antenna. (Bus. & Com. Code, Sec. 35.113.)

Sec. 25.004. EFFECT ON LOCAL ORDINANCES. This chapter does not preempt a local ordinance regulating a wireless communication facility. (Bus. & Com. Code, Sec. 35.114.)

SECTION 2.40. CONFORMING AMENDMENT. Section 21.070(a)(2), Transportation Code, is amended to read as follows:

(2) "Wireless communication facility" has the meaning assigned by Section 25.001 [~~35.111, Business & Commerce Code~~].

SECTION 2.41. CONFORMING AMENDMENT. Section 51.004(d), Utilities Code, is amended to read as follows:

(d) An offer made under Subsection (c) must be made in compliance with Chapter 304 [~~43~~], Business & Commerce Code[~~, as added by Chapter 1429, Acts of the 77th Legislature, Regular Session, 2001~~].

SECTION 2.42. CONFORMING AMENDMENT. Section 26.027(b), Water Code, as effective on delegation of NPDES permit authority, is amended to read as follows:

(b) A person desiring to obtain a permit or to amend a permit

shall submit an application to the commission containing all information reasonably required by the commission. The commission shall, at minimum, require an applicant who is an individual to provide:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Chapter 71 [~~36~~], Business & Commerce Code.

SECTION 2.43. CONFORMING AMENDMENT. Section C, Article 2.03, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

C. The filing of articles of organization under Part Three of this Act or an application to reserve a specified company name under Article 2.04 of this Act, does not authorize the use of limited liability company name in this State in violation of the rights of another under the Federal Trademark Act of 1946 (15 U.S.C., Section 1051 et seq.), the Texas trademark law (Chapter 16, Business & Commerce Code), the Assumed Business or Professional Name Act (Chapter 71 [~~36~~], Business & Commerce Code), or the common law.

SECTION 2.44. CONFORMING AMENDMENT. Section 9.03(b), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas

Civil Statutes), is amended to read as follows:

(b) Unless the partnership conducts business under another name, filing the application with the secretary of state makes it unnecessary to file any other documents under the Assumed Business or Professional Name Act (Chapter 71 [~~36~~], Business & Commerce Code).

SECTION 2.45. CONFORMING AMENDMENT. Section C, Article 2.05, Texas Business Corporation Act, is amended to read as follows:

C. The filing of articles of incorporation under Part Three of this Act, an application to reserve a specified Corporate name under Article 2.06 of this Act, or an application to register a Corporate name by a foreign corporation under Article 2.07 of this Act does not authorize the use of a Corporate name in this State in violation of the rights of another under the federal Trademark Act of 1946 (15 U.S.C., Section 1051 et seq.), the Texas trademark law (Chapter 16, Business & Commerce Code), the Assumed Business or Professional Name Act (Chapter 71 [~~36~~], Business & Commerce Code), or the common law. The Secretary of State shall deliver to each newly organized corporation, applicant for reservation of a Corporate name, and newly registered foreign corporation a notice containing the substance of this section.

SECTION 2.46. CONFORMING AMENDMENT. Section A, Article 8.03, Texas Business Corporation Act, is amended to read as follows:

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one (1) of such words, or such corporation shall, for use in this state, add at the end of its name one (1) of such words or an abbreviation thereof.

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation, limited partnership, or limited liability company existing under the laws of this state or of any foreign corporation, limited partnership, or limited liability company authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in the manner provided in this Act or any other statute providing for the reservation or registration of names by a limited partnership or limited liability company; provided that a name may be similar if written consent is obtained from the existing corporation, limited partnership, or limited liability company having the name deemed to be similar or the person for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided in this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic corporation, limited partnership, or limited liability company existing under the laws of this state or of any foreign corporation, limited partnership, or limited liability company authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act or any other applicable law,

provided such foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 71 [~~36~~], Business & Commerce Code[~~, as amended~~].

SECTION 2.47. CONFORMING AMENDMENT. Section A, Article 8.03, Texas Non-Profit Corporation Act (Article 1396-8.03, Vernon's Texas Civil Statutes), is amended to read as follows:

A. No certificate of authority shall be issued to a foreign corporation if the corporate name of such corporation:

(1) Contains any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Is the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided by this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic

corporation existing under the laws of this State or of any foreign corporation authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided the foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 71 [~~36~~], Business & Commerce Code[~~, as amended~~].

SECTION 2.48. REPEAL OF ARTICLE 6166.Z8. Chapter 251, Acts of the 40th Legislature, Regular Session, 1927 (Article 6166z8, Vernon's Texas Civil Statutes), is repealed.

SECTION 2.49. GENERAL REPEALER. (a) The following provisions of the Business & Commerce Code are repealed:

(1) Chapters 19, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47;

(2) Chapter 48, as added by Chapter 294, Acts of the 79th Legislature, Regular Session, 2005;

(3) Chapter 48, as added by Chapter 298, Acts of the 79th Legislature, Regular Session, 2005; and

(4) Chapter 48, as added by Chapter 544, Acts of the 79th Legislature, Regular Session, 2005.

(b) The following Acts and articles as compiled in Vernon's Texas Civil Statutes are repealed:

(1) 1015g-6;

(2) 1446.01, 1446.1, 1446.2, 1446.3, 1446.4, 1446.5,

1446.6, 1446.7, 1446.8, 1446.9, 1446.10, 1446.11, 1446.12, 1446.13, 1446.14, 1446.15, 1446.16, 1446.17, 1446.18, 1446.19, 1446.20, 1446.21, 1446.22, 1446.23, 1446.24, 1446.25, and 1446.26;

(3) 8610a, 8612, 8613, and 8614; and

(4) 9020, 9023e, 9026a, 9026b, and 9026c.

ARTICLE 3. DEVELOPMENT CORPORATIONS

SECTION 3.01. CODIFICATION OF DEVELOPMENT CORPORATION ACT OF 1979. Title 12, Local Government Code, is amended by adding Subtitle C1 to read as follows:

SUBTITLE C1. ADDITIONAL PLANNING AND DEVELOPMENT PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 501. PROVISIONS GOVERNING DEVELOPMENT CORPORATIONS

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Sec. 501.106. AIRPORT FACILITIES OR OTHER PROJECTS BY CORPORATIONS AUTHORIZED BY CERTAIN BORDER MUNICIPALITIES

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CHAPTER 501. PROVISIONS GOVERNING DEVELOPMENT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. SHORT TITLE. This subtitle may be cited as the Development Corporation Act. (V.A.C.S. Art. 5190.6, Sec. 1.)

Sec. 501.002. DEFINITIONS. In this subtitle:

(1) "Authorizing unit" means the unit that authorizes the creation of a corporation under this subtitle.

(2) "Board of directors" means the board of directors of a corporation.

(3) "Bonds" includes evidences of indebtedness, including bonds and notes.

(4) "Corporate headquarters facilities" means

buildings proposed for construction or occupancy as the principal office for a business enterprise's administrative and management services.

(5) "Corporation" means a corporation organized under this subtitle.

(6) "Cost," with respect to a project, has the meaning assigned by Section 501.152.

(7) "County alliance" means two or more counties that jointly authorize the creation of a corporation under this subtitle.

(8) "District" means a conservation and reclamation district established under Section 59, Article XVI, Texas Constitution.

(9) "Economic development office" means the Texas Economic Development and Tourism Office within the office of the governor.

(10) "Governing body" means the commissioners court of a county or the governing body of a municipality or district.

(11) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(12) "Primary job" means:

(A) a job that is:

(i) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and

(ii) included in one of the following

sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding motion picture theaters and drive-in motion picture theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles

5413, 5415, 5416, 5417, and 5419	Architectural, Engineering, and Related Services; Computer System Design and Related Services; Management, Scientific, and Technical Consulting Services; Scientific Research and Development Services; Other Professional, Scientific, and Technical Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions; or

(B) a job that is included in North American Industry Classification System (NAICS) sector number 928110, National Security, for the corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

(13) "Project" means a project specified as such under Subchapter C.

(14) "Resolution" means a resolution, order, ordinance, or other official action by the governing body of a unit.

(15) "Type A corporation" means a corporation governed by Chapter 504.

(16) "Type B corporation" means a corporation governed by Chapter 505.

(17) "Unit" means a municipality, county, or district that may create and use a corporation under this subtitle. (V.A.C.S. Art. 5190.6, Secs. 2(1), (2), (3), (7), (8), (9), (10)

(part), (11) (part), as amended Acts 79th Leg., R.S., Chs. 1, 1048, 1148, (12), (13), (14), (15), as added Acts 76th Leg., R.S., Ch. 296, (17), (18); New.)

Sec. 501.003. WHO MAY BE USER. The following may be a user under this subtitle:

(1) an individual, a partnership, a corporation, or any other private entity organized for profit or not for profit; or

(2) a municipality, county, district, other political subdivision, public entity, or agency of this state or the federal government. (V.A.C.S. Art. 5190.6, Sec. 2(15), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 501.004. LEGISLATIVE FINDINGS; CONSTRUCTION OF SUBTITLE. (a) The legislature finds that:

(1) the present and prospective right to gainful employment and the general welfare of the people of this state require as a public purpose the promotion and development of new and expanded business enterprises and of job training;

(2) the existence, development, and expansion of business, commerce, industry, higher education, and job training are essential to the economic growth of this state and to the full employment, welfare, and prosperity of residents of this state;

(3) the assistance provided by corporations in promoting higher education opportunities encourages and fosters the development and diversification of the economy of this state and the elimination of unemployment and underemployment in this state;

(4) the means authorized by this subtitle and the

assistance provided by this subtitle, especially with respect to financing, are in the public interest and serve a public purpose of this state in promoting the welfare of the residents of this state economically by securing and retaining business enterprises and as a result maintaining a higher level of employment, economic activity, and stability;

(5) community industrial development corporations in this state have invested substantial money in successful industrial development projects and have experienced difficulty in undertaking additional industrial development projects because of the partial inadequacy of the community industrial development corporations' money or money potentially available from local subscription sources and the limitations of local financial institutions in providing additional and sufficiently large first mortgage loans; and

(6) communities in this state have been at a critical disadvantage in competing with communities in other states for the location or expansion of business enterprises because of the availability and prevalent use in all other states of financing and other special incentives, and, for that reason, the issuance of revenue bonds under this subtitle by a corporation on behalf of political subdivisions of this state for the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare is in the public interest and is a public purpose.

(b) This subtitle shall be construed in conformity with the intention of the legislature expressed in this section. (V.A.C.S.

Art. 5190.6, Sec. 3.)

Sec. 501.005. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this subtitle violates the federal or state constitution, a corporation by resolution may provide an alternate procedure that conforms to the constitution. (V.A.C.S. Art. 5190.6, Sec. 37 (part).)

Sec. 501.006. USE OF CORPORATION TO FINANCE PROJECT. A unit may use a corporation to issue bonds on the unit's behalf to finance the cost of a project, including a project in a federally designated empowerment zone or enterprise community or in an enterprise zone designated under Chapter 2303, Government Code, to promote and develop new and expanded business enterprises for the promotion and encouragement of employment and the public welfare. (V.A.C.S. Art. 5190.6, Sec. 21 (part).)

Sec. 501.007. LENDING CREDIT OR GRANTING PUBLIC MONEY. (a) Except as provided by Subsection (b), a unit may not lend its credit or grant public money or another thing of value in aid of a corporation.

(b) A municipality may grant public money to a corporation under a contract authorized by Section 380.002. (V.A.C.S. Art. 5190.6, Sec. 21 (part).)

Sec. 501.008. LIMITATION ON FINANCIAL OBLIGATION. A corporation may not incur a financial obligation that cannot be paid from:

(1) bond proceeds;

(2) revenue realized from the lease or sale of a project;

(3) revenue realized from a loan made by the corporation to wholly or partly finance or refinance a project; or

(4) money granted under a contract with a municipality under Section 380.002. (V.A.C.S. Art. 5190.6, Sec. 22 (part).)

Sec. 501.009. POLICE POWERS NOT AFFECTED. This subtitle does not deprive this state or a governmental subdivision of this state of its police powers over a corporation's property and does not impair any police power over the property that is otherwise provided by law to any official or agency of this state or its governmental subdivisions. (V.A.C.S. Art. 5190.6, Sec. 37 (part).)

Sec. 501.010. DELEGATION OF UNIT'S SOVEREIGN POWERS PROHIBITED. A unit may not delegate to a corporation any of the unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power. (V.A.C.S. Art. 5190.6, Sec. 22 (part).)

Sec. 501.011. REFERENCE TO ARTICLES OF INCORPORATION OR CERTIFICATE OF FORMATION. (a) With respect to a corporation created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) before January 1, 2006, a reference in any law of this state or in the corporation's governing documents to "articles of incorporation" means, for purposes of this subtitle, the corporation's certificate of formation.

(b) With respect to a corporation that is created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) before January 1, 2006, and continues to operate under articles of incorporation, a reference in this subtitle or any other law of this state or in the corporation's governing

documents to "certificate of formation" means the corporation's articles of incorporation. (New.)

[Sections 501.012-501.050 reserved for expansion]

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 501.051. AUTHORITY TO CREATE. (a) Three or more individuals who are qualified voters of a unit may file with the unit's governing body a written application requesting the unit to authorize creation of a corporation to act on behalf of the unit. The governing body may not charge a filing fee for the application.

(b) A corporation may be created only if the governing body of the unit by resolution:

(1) determines that the creation of the corporation is advisable; and

(2) approves the certificate of formation proposed to be used in organizing the corporation.

(c) A unit may authorize the creation of one or more corporations if the resolution authorizing the creation of each corporation specifies the public purpose of the unit to be furthered by the corporation. The specified public purpose must be limited to the promotion and development under this subtitle of enterprises to promote and encourage employment and the public welfare. (V.A.C.S. Art. 5190.6, Sec. 4(a) (part).)

Sec. 501.052. NONMEMBER, NONSTOCK FORM OF CORPORATION. A corporation is a nonmember, nonstock corporation. (V.A.C.S. Art. 5190.6, Sec. 5.)

Sec. 501.053. CORPORATION NONPROFIT; NET EARNINGS. (a) A corporation is nonprofit, and the corporation's net earnings

remaining after payment of its expenses may not benefit an individual, firm, or corporation, except as provided by Subsection (b).

(b) If the board of directors determines that sufficient provision has been made for the full payment of the corporation's expenses, bonds, and other obligations, any net earnings of the corporation subsequently accruing shall be paid to the corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Sec. 33.)

Sec. 501.054. GENERAL POWERS, PRIVILEGES, AND FUNCTIONS. (a) A corporation has the powers, privileges, and functions of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code. To the extent that the provisions governing powers, privileges, and functions of a nonprofit corporation under those laws are in conflict with or inconsistent with provisions of this subtitle governing powers, privileges, and functions of a nonprofit corporation, the provisions of this subtitle prevail.

(b) A corporation:

(1) has all powers incidental to or necessary for the performance of the powers provided by Sections 501.059, 501.060, 501.064, 501.153-501.155, 501.159, 501.201(a), 501.208, 501.209, 501.214, and 501.402; and

(2) with respect to a project, may exercise all powers necessary or appropriate to effect a purpose for which the corporation is organized, subject to the control of the governing

body of the corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

Sec. 501.055. CONSTITUTED AUTHORITY OR INSTRUMENTALITY. (a) A corporation is a constituted authority and an instrumentality, within the meaning of the United States Department of the Treasury regulations and the Internal Revenue Service rulings adopted under Section 103, Internal Revenue Code of 1986, as amended, including regulations and rulings adopted under Section 103, Internal Revenue Code of 1954, and may act on behalf of the corporation's authorizing unit for the specific public purpose authorized by the unit.

(b) A corporation is not a political subdivision or a political corporation for purposes of the laws of this state, including Section 52, Article III, Texas Constitution. (V.A.C.S. Art. 5190.6, Sec. 22 (part).)

Sec. 501.056. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a corporation must state:

(1) the name of the corporation;

(2) that the corporation is a nonprofit corporation;

(3) the duration of the corporation, which may be perpetual;

(4) the specific purpose for which the corporation is organized and may issue bonds on behalf of the unit;

(5) that the corporation has no members and is a nonstock corporation;

(6) any provision consistent with law for the regulation of the corporation's internal affairs, including any

provision required or permitted by this subtitle to be stated in the bylaws;

(7) the street address of the corporation's initial registered office and the name of the corporation's initial registered agent at that address;

(8) the number of directors of the initial board of directors and the name and address of each initial director;

(9) the name and street address of each organizer; and

(10) that the unit has:

(A) by resolution specifically authorized the corporation to act on the unit's behalf to further the public purpose stated in the resolution and the certificate of formation; and

(B) approved the certificate of formation. (V.A.C.S. Art. 5190.6, Sec. 6.)

Sec. 501.057. FILING OF CERTIFICATE OF FORMATION AND DELIVERY OF CERTIFICATE EVIDENCING FILING. (a) If the unit's governing body adopts a resolution under Section 501.051, the certificate of formation may be filed as provided by this section.

(b) Three originals of the certificate of formation shall be delivered to the secretary of state. If the secretary of state determines that the certificate of formation conforms to this subchapter, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original certificate of formation;

(2) file one of the original certificates of formation in the secretary of state's office;

(3) issue two certificates evidencing the filing of the certificate of formation;

(4) attach to each certificate evidencing the filing of the certificate of formation an original of the certificate of formation; and

(5) deliver a certificate evidencing the filing of the certificate of formation and the attached certificate of formation to:

(A) the organizers or the organizers' representatives; and

(B) the governing body of:

(i) the corporation's authorizing unit; or

(ii) any county in the county alliance that authorized the creation of the corporation, for a county alliance corporation.

(c) The governing body of a county to which a certificate evidencing the filing of the certificate of formation and the attached certificate of formation are delivered under Subsection (b)(5)(B)(ii) shall provide photocopies of the certificate evidencing the filing of the certificate of formation and the attached certificate of formation to each other member of the county alliance. (V.A.C.S. Art. 5190.6, Secs. 4(a) (part), 7(a), (b).)

Sec. 501.058. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING FILING. (a) A corporation's existence begins when the certificate evidencing the filing of its certificate of formation is issued.

(b) After the issuance of the certificate evidencing the

filing of the certificate of formation, the formation of the corporation may not be contested for any reason.

(c) A certificate evidencing the filing of the certificate of formation is conclusive evidence that:

(1) the organizers and the unit have performed all conditions precedent for the formation of the corporation; and

(2) the corporation is formed under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 7(c).)

Sec. 501.059. CORPORATE SEAL. A corporation may have a corporate seal and with respect to a project may impress, affix, or otherwise reproduce the seal or a facsimile of the seal on an instrument required to be executed by the corporation's appropriate officers. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

Sec. 501.060. MAY SUE AND BE SUED. With respect to a project, a corporation may sue, be sued, complain, and defend in the corporation's name. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

Sec. 501.061. CORPORATION'S ORGANIZATION NOT RESTRICTED. Except as provided by this subtitle, no proceeding, notice, or approval is required for the organization of a corporation. (V.A.C.S. Art. 5190.6, Sec. 37 (part).)

Sec. 501.062. BOARD OF DIRECTORS. (a) All of the powers of a corporation are vested in a board of directors consisting of three or more directors appointed by the governing body of the corporation's authorizing unit.

(b) A director serves for a term of not more than six years.

(c) The governing body of the corporation's authorizing unit may remove a director for cause or at will.

(d) A director serves without compensation, but is entitled to reimbursement for actual expenses incurred in the performance of the director's duties under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 11(a).)

Sec. 501.063. ORGANIZATIONAL MEETING. (a) After issuance of the certificate evidencing the filing of the certificate of formation, the board of directors named in the certificate of formation shall hold an organizational meeting in this state to adopt bylaws and elect officers and for other purposes.

(b) Not later than the third day before the date of the meeting, the organizers who call the meeting shall give notice by mail of the time and place of the meeting to each director named in the certificate of formation. (V.A.C.S. Art. 5190.6, Sec. 12.)

Sec. 501.064. BYLAWS. (a) A corporation may adopt and amend bylaws for the administration and regulation of the corporation's affairs.

(b) The board of directors shall adopt a corporation's initial bylaws.

(c) The bylaws and each amendment of the bylaws must:

(1) be consistent with state law and with the certificate of formation of the corporation; and

(2) be approved by resolution of the governing body of the corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Secs. 13, 23(a) (part).)

Sec. 501.065. OFFICERS. (a) A corporation has the following officers:

(1) a president;

(2) at least one vice president;

(3) a secretary;

(4) a treasurer; and

(5) other officers or assistant officers considered necessary.

(b) An officer of the corporation is elected or appointed at the time, in the manner, and for the term prescribed by the certificate of formation or bylaws, except that an officer's term may not exceed three years. In the absence of provisions in the certificate of formation or the bylaws prescribing the selection or terms of officers, the board of directors shall annually elect or appoint officers.

(c) A person may hold more than one office, except that the same person may not hold the offices of president and secretary. (V.A.C.S. Art. 5190.6, Sec. 16.)

Sec. 501.066. INDEMNIFICATION. (a) In this section, "director or officer" includes a former director or officer.

(b) Except as provided by Subsection (d), a corporation may indemnify a director or officer of the corporation for necessary expenses and costs, including attorney's fees, actually incurred by the director or officer in connection with a claim asserted against the director or officer, by action in court or another forum, by reason of the director's or officer's being or having been a director or officer of the corporation.

(c) Except as provided by Subsection (d), if a corporation has not fully indemnified a director or officer under Subsection (b), the court in a proceeding in which a claim is asserted against

the director or officer or a court having jurisdiction over an action brought by the director or officer on a claim for indemnity may assess indemnity against the corporation or the corporation's receiver or trustee. The assessment must equal the amount that the director or officer paid to satisfy the judgment or compromise the claim, including attorney's fees and not including any amount paid to the corporation, to the extent that:

(1) the amount paid was actually and necessarily incurred; and

(2) the court considers the amount paid reasonable and equitable.

(d) A corporation may not indemnify a director or officer for a matter in which the director or officer is guilty of negligence or misconduct. A court may assess indemnity against the corporation only if the court finds that the director or officer was not guilty of negligence or misconduct in the matter for which indemnity is sought. (V.A.C.S. Art. 5190.6, Secs. 15(a), (b); New.)

Sec. 501.067. INSURANCE AND BENEFITS. (a) Notwithstanding any law to the contrary and with the consent of the corporation's authorizing unit, a corporation may obtain:

(1) health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the authorizing unit's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision; or

(2) retirement benefits under a retirement program the

authorizing unit participates in or operates.

(b) Health benefits coverage may be extended to the corporation's directors and employees, and to the dependents of the directors and employees.

(c) Workers' compensation benefits may be extended to the corporation's directors, employees, and volunteers.

(d) Liability coverage may be extended to protect the corporation and the corporation's directors and employees.

(e) Retirement benefits may be extended to the corporation's employees. (V.A.C.S. Art. 5190.6, Secs. 23(c), (d).)

Sec. 501.068. BOARD MEETINGS; NOTICE OF MEETING. (a) A board of directors may hold a regular meeting in this state with or without notice as prescribed by the corporation's bylaws.

(b) A board of directors may hold a special meeting with notice as prescribed by the corporation's bylaws.

(c) A director's attendance at a board meeting constitutes a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of any business at the meeting because the meeting has not been lawfully called or convened.

(d) Unless required by the corporation's bylaws, notice or waiver of notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting. (V.A.C.S. Art. 5190.6, Sec. 15(c).)

Sec. 501.069. WAIVER OF NOTICE. If a notice is required to be given to a director of a corporation under this subtitle or the corporation's certificate of formation or bylaws, a written waiver

of the notice signed by the person entitled to the notice is equivalent to giving the required notice. The waiver may be given before or after the time that would have been stated in the notice. (V.A.C.S. Art. 5190.6, Sec. 15(d).)

Sec. 501.070. ACTION OF BOARD; QUORUM. (a) A quorum of a board of directors is the lesser of:

(1) a majority of the number of directors:

(A) established by the corporation's bylaws; or

(B) stated in the corporation's certificate of formation, if the bylaws do not establish the number of directors; or

(2) the number of directors, not less than three, established as a quorum by the certificate of formation or bylaws.

(b) The act of a majority of the directors present at a meeting at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the certificate of formation or bylaws of the corporation. (V.A.C.S. Art. 5190.6, Secs. 14(a), (b).)

Sec. 501.071. ACTION WITHOUT MEETING. (a) An action that may be taken at a meeting of a board of directors, including an action required by this subtitle to be taken at a meeting, may be taken without a meeting if each director signs a written consent providing the action to be taken.

(b) The consent has the same effect as a unanimous vote and may be stated as such in a document filed with the secretary of state under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 14(c).)

Sec. 501.072. OPEN MEETINGS AND PUBLIC INFORMATION. A

board of directors is subject to the open meetings law, Chapter 551, Government Code, and the public information law, Chapter 552, Government Code. (V.A.C.S. Art. 5190.6, Secs. 11(b), 14A.)

Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT. (a) The corporation's authorizing unit will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.

(b) A corporation's authorizing unit is entitled to access to the corporation's books and records at all times. (V.A.C.S. Art. 5190.6, Sec. 21 (part).)

Sec. 501.074. PURCHASING. A corporation may use the reverse auction procedure defined by Section 2155.062(d), Government Code, for purchasing. (V.A.C.S. Art. 5190.6, Sec. 23(e).)

Sec. 501.075. EXEMPTION FROM TAXATION. (a) The activities of a corporation affect all the residents of the corporation's authorizing unit by the corporation's assuming to a material extent what otherwise might be an obligation or duty of the authorizing unit, and therefore the corporation is an institution of purely public charity within the tax exemption of Section 2, Article VIII, Texas Constitution.

(b) A corporation is exempt from the tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter. (V.A.C.S. Art. 5190.6, Sec. 32.)

[Sections 501.076-501.100 reserved for expansion]

SUBCHAPTER C. AUTHORIZED PROJECTS

Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF

PRIMARY JOBS. In this subtitle, "project" includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are:

(1) for the creation or retention of primary jobs; and

(2) found by the board of directors to be required or suitable for the development, retention, or expansion of:

(A) manufacturing and industrial facilities;

(B) research and development facilities;

(C) military facilities, including closed or realigned military bases;

(D) transportation facilities, including airports, ports, mass commuting facilities, and parking facilities;

(E) sewage or solid waste disposal facilities;

(F) recycling facilities;

(G) air or water pollution control facilities;

(H) facilities for furnishing water to the public;

(I) distribution centers;

(J) small warehouse facilities capable of serving as decentralized storage and distribution centers;

(K) primary job training facilities for use by institutions of higher education; or

(L) regional or national corporate headquarters facilities. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Chs. 1, 1048, 1148.)

Sec. 501.102. PROJECTS RELATED TO CERTAIN JOB TRAINING. In

this subtitle, "project" includes job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this subtitle, as provided by Section 501.162. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Chs. 1, 1048, 1148.)

Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS. In this subtitle, "project" includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:

(1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;

(2) telecommunications and Internet improvements; or

(3) beach remediation along the Gulf of Mexico. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Chs. 1, 1048, 1148.)

Sec. 501.104. PROJECTS RELATED TO CERTAIN MILITARY BASES OR MISSIONS. In this subtitle, "project" includes the infrastructure, improvements, land acquisition, buildings, or expenditures that:

(1) are for the creation or retention of primary jobs or jobs that are included in North American Industry Classification System (NAICS) sector number 926120, Regulation and Administration of Transportation Programs, for the corresponding index entry for Coast Guard (except the Coast Guard Academy); and

(2) are found by the board of directors to be required or suitable for:

(A) promoting or supporting a military base in active use to prevent the possible future closure or realignment of the base;

(B) attracting new military missions to a military base in active use; or

(C) redeveloping a military base that has been closed or realigned, including a military base closed or realigned according to the recommendation of the Defense Base Closure and Realignment Commission under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note). (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Ch. 1.)

Sec. 501.105. CAREER CENTER PROJECTS OUTSIDE OF JUNIOR COLLEGE DISTRICT. In this subtitle, "project" includes the land, buildings, equipment, facilities, improvements, and expenditures found by the board of directors to be required or suitable for use for a career center, if the area to be benefited by the career center is not located in the taxing jurisdiction of a junior college district. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Ch. 1048.)

Sec. 501.106. AIRPORT FACILITIES OR OTHER PROJECTS BY CORPORATIONS AUTHORIZED BY CERTAIN BORDER MUNICIPALITIES. (a) This section applies only to a corporation authorized to be created by a municipality, any part of which is located within 25 miles of an international border.

(b) For a corporation to which this section applies, in this subtitle, "project" includes the land, buildings, facilities,

infrastructure, and improvements that:

(1) the corporation's board of directors finds are required or suitable for the development or expansion of airport facilities; or

(2) are undertaken by the corporation if the municipality that authorized the creation of the corporation has, at the time the corporation approves the project as provided by this subtitle:

(A) a population of less than 50,000; or

(B) an average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period for which data is available that precedes the date the project is approved. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Ch. 1148.)

Sec. 501.107. INFRASTRUCTURE PROJECTS BY CORPORATIONS AUTHORIZED BY MUNICIPALITIES IN CERTAIN BORDER COUNTIES. (a) This section applies only to a corporation that:

(1) is authorized to be created by a municipality wholly or partly located in a county that:

(A) is bordered by the Rio Grande;

(B) has a population of at least 500,000; and

(C) has wholly or partly within its boundaries at least four municipalities each of which has a population of at least 25,000; and

(2) does not support a project, as defined by this subchapter, with sales and use tax revenue collected under Chapter 504 or 505.

(b) For a corporation to which this section applies, in this subtitle, "project" includes expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Ch. 1148.)

[Sections 501.108-501.150 reserved for expansion]

SUBCHAPTER D. CORPORATE POWERS AND LIMITATIONS RELATING TO PROJECTS

Sec. 501.151. AUTHORITY TO FINANCE PROJECT. A corporation is a constituted authority for the purpose of financing one or more projects. (V.A.C.S. Art. 5190.6, Sec. 2(10) (part).)

Sec. 501.152. DEFINITION OF COST WITH RESPECT TO PROJECT. In this subtitle, "cost," with respect to a project, means the cost of the acquisition, cleanup, construction, reconstruction, improvement, or expansion of a project, including:

(1) the cost of acquiring all land, rights-of-way, property rights, easements, and interests;

(2) the cost of all machinery and equipment;

(3) financing charges;

(4) the cost of inventory, raw materials, and other supplies;

(5) research and development costs;

(6) interest accruing before and during construction and until the first anniversary of the date the construction is completed, regardless of whether capitalized;

(7) necessary reserve funds;

(8) the cost of estimates, including estimates of cost and revenue;

(9) the cost of engineering or legal services;

(10) the cost of plans, specifications, or surveys;

(11) other expenses necessary or incident to determining the feasibility and practicability of acquiring, cleaning, constructing, reconstructing, improving, and expanding the project;

(12) administrative expenses; and

(13) other expenditures necessary or incident to:

(A) acquiring, cleaning, constructing, reconstructing, improving, and expanding the project;

(B) placing the project in operation; and

(C) financing or refinancing the project, including refunding any outstanding obligations, mortgages, or advances issued, made, or given by a person for a cost described by this section. (V.A.C.S. Art. 5190.6, Sec. 2(4).)

Sec. 501.153. LEASE OR SALE OF PROJECT. (a) A corporation may:

(1) lease all or any part of a project to a user, for the rental and on the terms that the corporation's board of directors considers advisable and not in conflict with this subtitle; or

(2) sell, by installment payments or otherwise, and convey all or any part of a project to a user for the purchase price and on the terms the corporation's board of directors considers

advisable and not in conflict with this subtitle.

(b) A corporation may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide those facilities have been paid or provision has been made for the bonds' final payment. This subsection is procedurally exclusive for authority to convey or grant an option to purchase all or part of a project, and reference to another law is not required. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 29.)

Sec. 501.154. CONVEYANCE OF PROPERTY TO INSTITUTION OF HIGHER EDUCATION. With respect to a project, a corporation may donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property, fixtures, furnishings, equipment, or personal property to an institution of higher education for a legal purpose of the institution, on the terms the corporation's board of directors considers advisable and not in conflict with this subtitle. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

Sec. 501.155. LOAN TO FINANCE PROJECT. (a) A corporation may make a secured or unsecured loan to a user for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of a project, including the refunding of an outstanding obligation, mortgage, or advance issued, made, or given by a person for the cost of a project.

(b) For a loan made under this section, a corporation may charge and collect interest on the terms the corporation's board of directors considers advisable and not in conflict with this subtitle. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

Sec. 501.156. AGREEMENT MUST BENEFIT CORPORATION. An

agreement relating to a project must be for the benefit of the corporation. (V.A.C.S. Art. 5190.6, Sec. 28(a) (part).)

Sec. 501.157. DEFAULT ON AGREEMENT; ENFORCEMENT. An agreement relating to a project must provide that if a default occurs in the payment of the principal of or the interest or premium on the bonds or in the performance of any agreement contained in a proceeding, mortgage, or instrument, the payment or performance may be enforced by:

(1) mandamus; or

(2) the appointment of a receiver in equity with the power to:

(A) charge and collect rents, purchase price payments, and loan payments; and

(B) apply the revenue from the project in accordance with the resolution, mortgage, or instrument. (V.A.C.S. Art. 5190.6, Sec. 28(a) (part).)

Sec. 501.158. PERFORMANCE AGREEMENTS. (a) A corporation may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Subchapter C of this chapter or by Subchapter D, Chapter 505, unless the corporation enters into a performance agreement with the business enterprise.

(b) A performance agreement between a corporation and business enterprise must:

(1) provide, at a minimum, for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives

provided or expenditures made by the corporation under the agreement; and

(2) specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement. (V.A.C.S. Art. 5190.6, Sec. 40.)

Sec. 501.159. POWERS CONCERNING PROJECTS; JURISDICTION. (a) A corporation may acquire, by construction, devise, purchase, gift, lease, or otherwise, or any one or more of those methods and may construct, improve, maintain, equip, and furnish one or more projects undertaken by another corporation or located within this state, including within the coastal waters of this state, and within or partially within the limits of the authorizing unit of the corporation or within the limits of another unit, if the governing body of the other corporation or the unit requests the corporation to exercise its powers within that unit.

(b) A corporation may recover the costs of an investment under Subsection (a) from a unit or another corporation under a contract with a limited or unlimited duration. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

Sec. 501.160. OWNING OR OPERATING PROJECT AS BUSINESS. (a) Except as provided by Subsection (d), a corporation may not own or operate a project as a business other than:

(1) as a lessor, seller, or lender; or

(2) according to the requirements of any trust agreement securing the credit transaction.

(b) The user under a lease, sale, or loan agreement relating

to a project is considered the owner of the project for purposes of ad valorem taxes, sales and use taxes, or any other taxes imposed by this state or a political subdivision of this state.

(c) Purchasing and holding a mortgage, deed of trust, or other security interest or contracting for the servicing of a mortgage, deed of trust, or other security interest is not considered the operation of a project.

(d) A corporation has all the powers necessary to own and operate a project as a business if the project is a military installation or military facility that has been closed or realigned, including a military installation or facility closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note), as amended. (V.A.C.S. Art. 5190.6, Sec. 23(b).)

Sec. 501.161. CERTAIN ECONOMIC INCENTIVES PROHIBITED. (a) In this section, "related party" means a person who owns at least 80 percent of the business enterprise to which the sales and use tax would be rebated as part of an economic incentive.

(b) Notwithstanding any other provision of this subtitle, a corporation may not offer to provide an economic incentive for a business enterprise whose business consists primarily of purchasing taxable items using a resale certificate and then reselling those items to a related party. (V.A.C.S. Art. 5190.6, Sec. 42.)

Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING. A corporation may spend tax revenue received under this subtitle for job training offered through a business enterprise only if the

business enterprise has committed in writing to:

(1) create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or

(2) increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area. (V.A.C.S. Art. 5190.6, Sec. 38.)

[Sections 501.163-501.200 reserved for expansion]

SUBCHAPTER E. CORPORATE POWERS AND LIMITATIONS RELATING TO BONDS

Sec. 501.201. AUTHORITY TO ISSUE BONDS. (a) A corporation may issue bonds to defray all or part of the cost of a project, regardless of whether the bonds are wholly or partly exempt from federal income taxation.

(b) Except as limited by this subtitle or rules and guidelines of the economic development office, a corporation has full authority with respect to bonds.

(c) Except as otherwise provided by this subtitle, a corporation may issue bonds under this subtitle without obtaining the consent or approval of any department, division, or agency of this state, other than the attorney general under Chapter 1202, Government Code. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 25(d) (part), 30 (part).)

Sec. 501.202. TERMS. Bonds issued by a corporation must be dated and must mature in not more than 40 years. (V.A.C.S. Art. 5190.6, Sec. 25(a) (part).)

Sec. 501.203. SECURITIES COMMISSIONER PERMIT TO SELL SECURITIES REQUIRED. A corporation may not sell or offer for sale

bonds or other securities until the securities commissioner grants a permit authorizing the corporation to offer and sell the bonds or other securities under the registration provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), except as exempted from registration by rule or order of the State Securities Board. Appeal from an adverse decision of the securities commissioner or the State Securities Board is under the administrative procedure law, Chapter 2001, Government Code. The substantial evidence rule applies in an appeal under this subsection. (V.A.C.S. Art. 5190.6, Sec. 24(d).)

Sec. 501.204. AUTHORIZING UNIT'S APPROVAL OF BONDS. (a) A corporation may not deliver bonds, including refunding bonds, unless the governing body of the corporation's authorizing unit adopts a resolution, not earlier than the 60th day before the date the bonds are delivered, specifically approving the corporation's resolution providing for the issuance of the bonds.

(b) If the corporation is authorized to be created by a county alliance, the resolution required by Subsection (a) must be adopted by the commissioners courts of at least three-fifths of the members of the county alliance. (V.A.C.S. Art. 5190.6, Sec. 25(f).)

Sec. 501.205. BOND COUNSEL AND FINANCIAL ADVISORS. Bond counsel and financial advisors participating in a bond issue must be mutually acceptable to the corporation and the user. (V.A.C.S. Art. 5190.6, Sec. 24(e) (part).)

Sec. 501.206. MONEY USED TO PAY BONDS. The principal of and interest on bonds issued by a corporation are payable only from the

money provided for that payment and from the revenue of the project or projects for which the bonds were authorized. (V.A.C.S. Art. 5190.6, Secs. 22 (part), 25(a) (part).)

Sec. 501.207. BONDS NOT DEBT OF STATE OR AUTHORIZING UNIT. (a) Bonds issued under this subtitle are not a debt or pledge of the faith and credit of this state, the authorizing unit of the corporation issuing the bonds, or any other political corporation, subdivision, or agency of this state.

(b) The revenue bonds issued under this subtitle must contain on their face a statement to the effect that:

(1) neither this state, the authorizing unit of the corporation issuing the bonds, nor any other political corporation, subdivision, or agency of this state is obligated to pay the principal of or the interest on the bonds; and

(2) neither the faith and credit nor the taxing power of this state, the authorizing unit of the corporation issuing the bonds, or any other political corporation, subdivision, or agency of this state is pledged to the payment of the principal of or the interest on the bonds. (V.A.C.S. Art. 5190.6, Sec. 22 (part).)

Sec. 501.208. BOND SECURITY; DEFAULT. (a) The principal of and interest on any bonds issued by a corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project financed by the bonds or from the loan made by the corporation with respect to the project financed or refinanced by the bonds.

(b) As security for the payment of the principal of and interest on any bonds issued by a corporation and any agreements

made in connection with the issuance of bonds, the corporation may:

(1) mortgage and pledge any or all of the corporation's projects or any part of a project, including the project financed or refinanced and any enlargements of and additions to the project, owned before or acquired after the time of the mortgage or pledge; and

(2) assign any mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation, and pledge the revenues and receipts from the assigned mortgage or security.

(c) The resolution authorizing the issuance of bonds and any mortgage covering all or part of the project financed may include any agreement or provision that the board of directors considers advisable and not in conflict with this subtitle and that relates to:

(1) the maintenance of the project covered by the bonds or mortgage;

(2) the fixing and collection of rents;

(3) purchase price payments;

(4) loan payments;

(5) the creation and maintenance of special funds from those revenues; or

(6) the rights and remedies available in the event of a default.

(d) A mortgage to secure bonds may also provide that, in the event of a default in the payment of the bonds or a violation of another agreement contained in the mortgage, the mortgage may be

foreclosed and the mortgaged property may be sold in any manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may purchase property at a foreclosure sale if the trustee or holder is the highest bidder.

(e) A pledge, agreement, or mortgage made for the benefit or security of any of the corporation's bonds continues in effect until the principal of and interest on the bonds benefited or secured by the pledge, agreement, or mortgage have been fully paid. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 25(e) (part), 28(b).)

Sec. 501.209. TRUST AGREEMENT. (a) Bonds issued under this subtitle may be secured by a trust agreement between the corporation and a trust company or bank having the powers of a trust company. The trust company or bank may be located in or outside of this state.

(b) The trust agreement may:

(1) pledge or assign the lease, sale, or loan revenues to be received with respect to a project from a lessee, purchaser, or borrower for the payment of the principal of and interest and any premium on the bonds as the bonds become due and payable;

(2) provide for the creation and maintenance of reserves for a purpose described by Subdivision (1);

(3) state the rights and remedies of the bondholders and the trustee;

(4) restrict the individual right of action by bondholders in a manner that is customary in trust agreements or trust indentures securing bonds and debentures of private

corporations; and

(5) include any additional provision that the corporation considers reasonable and proper for the security of the bondholders.

(c) The trust agreement or a resolution approving the issuance of the bonds may provide for the protection and enforcement of the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants providing the duties relating to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which the bonds are authorized; and

(2) the custody, protection, and application of all money.

(d) A bank or trust company incorporated under the laws of this state that acts as depository of the bond proceeds or of revenues may furnish indemnifying bonds or pledge securities as required by the corporation.

(e) All expenses incurred in carrying out the trust agreement may be treated as a part of the cost of operating the project. (V.A.C.S. Art. 5190.6, Sec. 27.)

Sec. 501.210. FINANCIAL ASSURANCE OR RESPONSIBILITY REQUIREMENTS FOR CERTAIN PROJECTS. (a) The resolution or mortgage described by Section 501.208(c) may contain any agreement or provision for satisfying the financial assurance or responsibility requirements applicable to a project for which a permit is required under Chapter 361, Health and Safety Code, or Chapter 27, Water

Code, including a requirement relating to construction, proper operation, liability coverage, emergency response capability, well plugging, closure, and post-closure care.

(b) Evidence of the passage of a resolution by a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance or responsibility requirements applicable to the project is an adequate demonstration that sufficient financial resources will be available to comply with all existing financial assurance or responsibility requirements. (V.A.C.S. Art. 5190.6, Sec. 25(e) (part).)

Sec. 501.211. USE OF BOND PROCEEDS. (a) The proceeds of the bonds of each issue shall be:

(1) used to pay or make a loan in the amount of all or part of the cost of the project or projects for which the bonds were authorized; and

(2) disbursed in the manner and under any restrictions provided in the resolution authorizing the issuance of the bonds or in any trust agreement securing the bonds.

(b) Bond proceeds may be used to:

(1) pay all costs incurred in issuing the bonds;

(2) pay interest on the bonds for any time determined by the board of directors of the corporation issuing the bonds; and

(3) establish reserve funds and sinking funds for the bonds.

(c) If the proceeds of the bonds of any series issued for a project exceed the cost of the project for which the bonds were issued, the surplus shall be:

(1) deposited to the credit of the sinking fund for the bonds; or

(2) used to purchase bonds in the open market. (V.A.C.S. Art. 5190.6, Sec. 25(c).)

Sec. 501.212. INTERIM BONDS. (a) Before the preparation of definitive bonds, the corporation may, under like restrictions, issue interim bonds that may be exchanged for definitive bonds when the definitive bonds are executed and available for delivery.

(b) The corporation may issue interim bonds with or without coupons. (V.A.C.S. Art. 5190.6, Sec. 25(d) (part).)

Sec. 501.213. REFUNDING BONDS. (a) A corporation may provide by resolution for the issuance of refunding bonds:

(1) to refund outstanding bonds issued under this subtitle for a project, including the payment of any redemption premium on the bonds and the interest accrued or to accrue to the date of redemption; and

(2) if considered advisable by the corporation, additionally to finance improvements, extensions, or enlargements to the project for which the bonds being refunded were issued or for another project.

(b) The provisions of this subtitle relating to other bonds govern the issuance, maturities, and other details of the refunding bonds, the rights of the holders of the refunding bonds, and the rights, duties, and obligations of the corporation with respect to the same to the extent those provisions may be applicable.

(c) The corporation may issue the refunding bonds in exchange for outstanding bonds or may sell the refunding bonds and

use the proceeds to redeem outstanding bonds. (V.A.C.S. Art. 5190.6, Sec. 26.)

Sec. 501.214. SALE OR EXCHANGE OF BONDS. With respect to a project, a corporation may:

(1) sell bonds; or

(2) exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

[Sections 501.215-501.250 reserved for expansion]

SUBCHAPTER F. ADMINISTRATION BY ECONOMIC DEVELOPMENT OFFICE

Sec. 501.251. STATE STANDARDS FOR PROJECT ELIGIBILITY. The economic development office shall adopt rules providing minimum standards for project eligibility. (V.A.C.S. Art. 5190.6, Sec. 24(a) (part).)

Sec. 501.252. STATE STANDARDS AND GUIDELINES FOR LEASE, SALE, OR LOAN AGREEMENTS. (a) The economic development office shall adopt rules:

(1) providing minimum standards for lease, sale, and loan agreements entered into under this subtitle; and

(2) providing guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under a lease, sale, or loan agreement entered into under this subtitle.

(b) The economic development office may adopt rules governing the terms of a loan made by a corporation to a bank or other lending institution the proceeds of which are reloaned as

permanent or temporary financing of a project. (V.A.C.S. Art. 5190.6, Secs. 24(a) (part), (f) (part).)

Sec. 501.253. RULES FOR SMALL BUSINESS PROGRAMS. The economic development office shall adopt rules governing programs for small businesses receiving loans guaranteed wholly or partly by the United States Small Business Administration or another federal agency. (V.A.C.S. Art. 5190.6, Sec. 24(f) (part).)

Sec. 501.254. FILING OF RULES AND GUIDELINES WITH SECRETARY OF STATE. Rules and guidelines adopted by the economic development office and amendments to the rules and guidelines take effect only after the filing of the rules and guidelines or amendments with the secretary of state. (V.A.C.S. Art. 5190.6, Sec. 24(a) (part).)

Sec. 501.255. APPROVAL OF LEASE, SALE, OR LOAN AGREEMENT. (a) A lease, sale, or loan agreement entered into under this subtitle must be approved by the economic development office. The economic development office may not approve an agreement unless the office affirmatively finds that the project sought to be financed furthers the public purposes of this subtitle.

(b) The corporation may appeal an adverse ruling or decision of the economic development office under Subsection (a) to a district court of Travis County. The substantial evidence rule applies in an appeal under this subsection.

(c) A corporation:

(1) may enter into a lease, sale, or loan agreement under this subtitle without obtaining the consent or approval of any department, division, or agency of this state except as otherwise provided by this subtitle; and

(2) has full authority with respect to a lease, sale, or loan agreement, except as limited by this subtitle or by rules and guidelines of the economic development office. (V.A.C.S. Art. 5190.6, Secs. 24(a) (part), 25(d) (part), 30 (part).)

Sec. 501.256. APPROVAL OF BONDS BY ECONOMIC DEVELOPMENT OFFICE. (a) A corporation may submit a transcript of proceedings in connection with the issuance of bonds to the economic development office and request that the office approve the bonds. A corporation shall include a nonrefundable filing fee with the request. The office shall set the amount of the fee at a reasonable amount that is not less than $500 or more than $25,000.

(b) If the economic development office refuses to approve the bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Texas Supreme Court, and for this purpose the executive director of the economic development office is considered a state officer under Section 22.002, Government Code. (V.A.C.S. Art. 5190.6, Sec. 24(b).)

Sec. 501.257. FILING OF FEE SCHEDULE AND BOND PROCEDURES. The economic development office by rule shall require a corporation to file fee schedules and bond procedures. (V.A.C.S. Art. 5190.6, Sec. 24(e) (part).)

Sec. 501.258. DELEGATION OF AUTHORITY. The economic development office may delegate to the executive director of the office the authority to approve a lease, sale, or loan agreement made under this subtitle or bonds issued by a corporation or any documents submitted as provided in this subtitle. (V.A.C.S. Art. 5190.6, Sec. 24(c).)

[Sections 501.259-501.300 reserved for expansion]

SUBCHAPTER G. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF FORMATION

Sec. 501.301. AMENDMENT BY BOARD OF DIRECTORS. (a) The board of directors of a corporation at any time may file with the governing body of the corporation's authorizing unit a written application requesting that the authorizing unit approve an amendment to the certificate of formation.

(b) The application must specify the proposed amendment. The board of directors shall amend the certificate of formation in accordance with this subchapter if the governing body of the authorizing unit by resolution:

(1) determines that it is advisable to adopt the amendment;

(2) authorizes the adoption of the amendment; and

(3) approves the form of the amendment. (V.A.C.S. Art. 5190.6, Sec. 17(a).)

Sec. 501.302. AMENDMENT BY UNIT. The governing body of the authorizing unit of a corporation, at the unit's sole discretion, may in accordance with this subchapter amend the corporation's certificate of formation at any time by:

(1) adopting the amendment by resolution; and

(2) delivering the certificate of amendment to the secretary of state. (V.A.C.S. Art. 5190.6, Sec. 17(b).)

Sec. 501.303. AMENDMENT TO COUNTY ALLIANCE CORPORATION'S CERTIFICATE OF FORMATION. An amendment to the certificate of formation of a county alliance corporation may not be adopted

unless approved by the governing body of each member of the county alliance that authorized the creation of the corporation. (V.A.C.S. Art. 5190.6, Sec. 17(c).)

Sec. 501.304. CONTENTS OF CERTIFICATE OF AMENDMENT. The certificate of amendment must:

(1) state the name of the corporation;

(2) if the amendment alters a provision of the certificate of formation, identify by reference or describe the altered provision and include the provision's text as amended;

(3) if the amendment is an addition to the certificate of formation, state that fact and include the text of each provision added; and

(4) state that the amendment was adopted or approved by the governing body of the authorizing unit and give the date the governing body adopted or approved the amendment. (V.A.C.S. Art. 5190.6, Sec. 18 (part).)

Sec. 501.305. EXECUTION AND VERIFICATION OF CERTIFICATE OF AMENDMENT. (a) A certificate of amendment shall be executed:

(1) on behalf of the corporation by the president or a vice president of the corporation and by the secretary or an assistant secretary of the corporation; or

(2) by the presiding officer of the governing body of the corporation's authorizing unit and by the secretary or clerk of the governing body.

(b) One of the officers who signs the certificate of amendment shall verify the certificate of amendment. (V.A.C.S. Art. 5190.6, Sec. 18 (part).)

Sec. 501.306. DELIVERY AND FILING OF CERTIFICATE OF AMENDMENT. (a) Three originals of the certificate of amendment shall be delivered to the secretary of state.

(b) If the secretary of state determines that the certificate of amendment conforms to this subchapter and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the certificate of amendment;

(2) file one of the original certificates of amendment in the secretary of state's office;

(3) issue two certificates evidencing the filing of the certificate of amendment;

(4) attach to each certificate evidencing the filing of the certificate of amendment; and

(5) deliver a certificate evidencing the filing of the certificate of amendment and the attached certificate of amendment to:

(A) the corporation or the corporation's representative; and

(B) the governing body of the corporation's authorizing unit.

(c) On the issuance of the certificate evidencing the filing of the certificate of amendment, the amendment becomes effective and the certificate of formation is amended accordingly. (V.A.C.S. Art. 5190.6, Secs. 19(a), (b), (c).)

Sec. 501.307. SUITS OR RIGHTS NOT AFFECTED. (a) An amendment to a corporation's certificate of formation does not

affect:

(1) any existing cause of action in favor of or against the corporation;

(2) any pending suit to which the corporation is a party; or

(3) the existing rights of any person.

(b) If a corporation's name is changed by amendment to the certificate of formation, a suit brought by or against the corporation under its former name does not abate for that reason. (V.A.C.S. Art. 5190.6, Sec. 19(d).)

Sec. 501.308. RESTATED CERTIFICATE OF FORMATION. A corporation may authorize, execute, and file a restated certificate of formation by following the procedure to amend the certificate of formation provided by this subchapter, including obtaining the approval of the governing body of the corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Sec. 20(a) (part).)

Sec. 501.309. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT. (a) A corporation may, without making any additional amendment, restate the entire text of the certificate of formation as amended or supplemented by all certificates evidencing the filing of a certificate of amendment previously issued by the secretary of state.

(b) The introductory paragraph of a restatement under this section must contain a statement that the restatement:

(1) accurately copies the certificate of formation and all amendments to the certificate of formation that are in effect; and

(2) does not contain any change to the certificate of formation. (V.A.C.S. Art. 5190.6, Secs. 20(a) (part), (b) (part).)

Sec. 501.310. RESTATEMENT WITH ADDITIONAL AMENDMENT. (a) A corporation may:

(1) restate the entire text of the certificate of formation as amended or supplemented by all certificates evidencing the filing of a certificate of amendment previously issued by the secretary of state; and

(2) as part of the restatement, make additional amendments to the certificate of formation.

(b) A restatement under this section must:

(1) state that each additional amendment to the certificate of formation conforms to this subtitle;

(2) contain any statement required by this subtitle for the certificate of amendment, except that the full text of an additional amendment is not required to be set out other than in the restatement itself;

(3) contain a statement that:

(A) the restatement is an accurate copy of the certificate of formation and all amendments to the certificate of formation that are in effect and all additional amendments made to the certificate of formation; and

(B) the restatement does not contain any other change to the certificate of formation; and

(4) restate the text of the entire certificate of formation as amended or supplemented by all certificates evidencing the filing of a certificate of amendment previously issued by the

secretary of state and as additionally amended by the restated certificate of formation. (V.A.C.S. Art. 5190.6, Secs. 20(a) (part), (c) (part).)

Sec. 501.311. CHANGE IN CERTAIN INFORMATION NOT AMENDMENT. For purposes of restating the certificate of formation under Sections 501.309 and 501.310, substituting the current number, names, and addresses of the directors for similar information of the initial board of directors or omitting the name and address of each organizer is not an amendment to or change in the certificate of formation. (V.A.C.S. Art. 5190.6, Secs. 20(b) (part), (c) (part).)

Sec. 501.312. EXECUTION AND VERIFICATION OF RESTATED CERTIFICATE OF FORMATION. (a) Originals of the restated certificate of formation shall be executed on behalf of the corporation by the president or a vice president of the corporation and by the secretary or an assistant secretary of the corporation.

(b) One of the officers who signs the restated certificate of formation shall verify the restated certificate. (V.A.C.S. Art. 5190.6, Sec. 20(d) (part).)

Sec. 501.313. DELIVERY AND FILING OF RESTATED CERTIFICATE OF FORMATION. (a) Three originals of the restated certificate of formation shall be delivered to the secretary of state.

(b) If the secretary of state determines that the restated certificate of formation conforms to law and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the restated certificate of formation;

(2) file one of the original restated certificates of formation in the secretary of state's office;

(3) issue two certificates evidencing the filing of the restated certificate of formation;

(4) attach to each certificate evidencing the filing of the restated certificate of formation an original of the restated certificate of formation; and

(5) deliver a certificate evidencing the filing of the restated certificate of formation and the attached restated certificate of formation to:

(A) the corporation or the corporation's representative; and

(B) the governing body of:

(i) the corporation's authorizing unit; or

(ii) any county in the county alliance that authorized the creation of the corporation, for a county alliance corporation.

(c) The governing body of a county to which a certificate evidencing the filing of the restated certificate of formation and the attached restated certificate of formation are delivered under Subsection (b)(5)(B)(ii) shall provide photocopies of the certificate evidencing the filing of the restated certificate of formation and the attached restated certificate of formation to each other member of the county alliance. (V.A.C.S. Art. 5190.6, Secs. 20(d) (part), (e).)

Sec. 501.314. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING FILING OF RESTATED CERTIFICATE OF FORMATION. On the issuance of the

certificate evidencing the filing of the restated certificate of formation by the secretary of state:

(1) the original certificate of formation and all amendments to the original certificate of formation are superseded; and

(2) the restated certificate of formation becomes the certificate of formation of the corporation. (V.A.C.S. Art. 5190.6, Sec. 20(f).)

[Sections 501.315-501.350 reserved for expansion]

SUBCHAPTER H. REGISTERED OFFICE AND AGENT; SERVICE OF PROCESS

Sec. 501.351. REGISTERED OFFICE AND AGENT. (a) A corporation shall continuously maintain in this state a registered office and registered agent.

(b) A corporation's registered office may, but is not required to be, the same as the corporation's principal office.

(c) A corporation's registered agent may be:

(1) an individual who is a resident of this state and whose business office is the same as the corporation's registered office; or

(2) a domestic or foreign for-profit or nonprofit corporation that:

(A) is authorized to transact business or to conduct affairs in this state; and

(B) has a principal or business office that is the same as the corporation's registered office. (V.A.C.S. Art. 5190.6, Sec. 8.)

Sec. 501.352. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A

corporation may change its registered office or registered agent by filing in the office of the secretary of state a statement declaring:

(1) the name of the corporation;

(2) the postal mailing address of the corporation's registered office at the time of filing;

(3) the postal address to which the registered office is to be changed, if the postal mailing address of the corporation's registered office is to be changed;

(4) the name of the corporation's registered agent at the time of filing;

(5) the name of the corporation's successor registered agent, if the corporation's registered agent is to be changed;

(6) that the postal mailing address of the corporation's registered office and the postal mailing address of the business office of the corporation's registered agent as changed will be the same; and

(7) that the change was authorized by:

(A) the corporation's board of directors; or

(B) an officer of the corporation authorized by the corporation's board of directors to make the change.

(b) Two originals of the statement shall be:

(1) executed on behalf of the corporation by the president or a vice president of the corporation;

(2) verified by the executing officer; and

(3) delivered to the secretary of state.

(c) If the secretary of state determines that the statement

conforms to this section and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the statement;

(2) file one of the original statements in the secretary of state's office; and

(3) return the other original statement to the corporation or the corporation's representative.

(d) A change made by the statement becomes effective on the filing of the statement by the secretary of state. (V.A.C.S. Art. 5190.6, Secs. 9(a), (b), (c).)

Sec. 501.353. RESIGNATION OF REGISTERED AGENT. (a) A corporation's registered agent may resign by:

(1) giving written notice to the corporation at the corporation's last known address; and

(2) giving three originals of the written notice to the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice of resignation must include:

(1) the corporation's last known address;

(2) a statement that written notice of the resignation was given to the corporation; and

(3) the date on which the written notice of resignation was given to the corporation.

(c) If the secretary of state determines that the notice of resignation conforms to this section, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing

on each original of the notice of resignation;

(2) file one of the original notices of resignation in the secretary of state's office;

(3) return one original notice of resignation to the resigning registered agent; and

(4) return one original notice of resignation to the corporation at the corporation's last known address shown in the notice.

(d) The appointment of a registered agent terminates on the 31st day after the date the secretary of state receives the notice of resignation that complies with this section. (V.A.C.S. Art. 5190.6, Secs. 9(d), (e).)

Sec. 501.354. AGENTS FOR SERVICE. (a) The president, each vice president, and the registered agent of a corporation are the corporation's agents on whom a process, notice, or demand required or permitted by law to be served on the corporation may be served.

(b) If a corporation does not appoint or maintain a registered agent in this state or if the corporation's registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand described by Subsection (a) may be served.

(c) Service of a process, notice, or demand on the secretary of state is made by delivering two copies of the process, notice, or demand to the secretary of state, the deputy secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state shall immediately forward

by registered mail one copy of the process, notice, or demand to the corporation at the corporation's registered office.

(d) Service made on the secretary of state under this section is returnable not earlier than the 30th day after the date of service.

(e) The secretary of state shall keep a record of each process, notice, and demand served on the secretary of state under this subtitle and shall include in the record the time of the service and the secretary of state's action in response to the service. (V.A.C.S. Art. 5190.6, Sec. 10.)

[Sections 501.355-501.400 reserved for expansion]

SUBCHAPTER I. ALTERATION OR TERMINATION OF CORPORATION

Sec. 501.401. ALTERATION OR TERMINATION BY AUTHORIZING UNIT. (a) At any time a corporation's authorizing unit, in its sole discretion, may in accordance with this subtitle:

(1) alter the corporation's structure, organization, programs, or activities; or

(2) terminate the existence of the corporation.

(b) The authority of an authorizing unit under this section is limited only by the law of this state on the impairment of contracts entered into by the corporation.

(c) An authorizing unit may make an alteration or may terminate the corporation's existence only by a written resolution of the authorizing unit's governing body. (V.A.C.S. Art. 5190.6, Sec. 34.)

Sec. 501.402. TERMINATION OF CORPORATION ON COMPLETION OF PURPOSE. The board of directors of a corporation, with the approval

by written resolution of the corporation's authorizing unit, shall terminate the corporation's existence as provided by this subtitle if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all bonds issued by the corporation have been fully paid. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 35.)

Sec. 501.403. EXECUTION OF CERTIFICATE OF TERMINATION. A certificate of termination shall be executed:

(1) on behalf of the corporation by the president or a vice president of the corporation and by the secretary or an assistant secretary of the corporation; or

(2) by the presiding officer of the governing body of the corporation's authorizing unit and the secretary or clerk of the governing body. (V.A.C.S. Art. 5190.6, Sec. 36(a) (part).)

Sec. 501.404. DELIVERY AND FILING OF CERTIFICATE OF TERMINATION. (a) Three originals of the certificate of termination shall be delivered to the secretary of state.

(b) If the secretary of state determines that the certificate of termination conforms to this subtitle and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the certificate of termination;

(2) file one of the original certificates of termination in the secretary of state's office;

(3) issue two certificates evidencing the filing of the certificate of termination;

(4) attach to each certificate evidencing the filing of the certificate of termination an original of the certificate of termination; and

(5) deliver a certificate evidencing the filing of the certificate of termination and the attached certificate of termination to:

(A) the representative of the terminated corporation; and

(B) the governing body of the terminated corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Secs. 36(a) (part), (b) (part).)

Sec. 501.405. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING FILING OF CERTIFICATE OF TERMINATION. The corporate existence ends on the issuance of the certificate evidencing the filing of the certificate of termination except for the purpose of:

(1) any suit or other proceeding; and

(2) appropriate corporate action by a director or officer under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 36(b) (part).)

Sec. 501.406. ASSETS ON TERMINATION. On termination the title to all funds and property owned by the corporation is transferred to the corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Sec. 36(c).)

Sec. 501.407. TERMINATION WITH TRANSFER OF ASSETS TO TYPE A CORPORATION. On approval of the governing bodies of each unit and corporation involved, a corporation that is not a Type A corporation may transfer all of the corporation's assets to a Type A

corporation and terminate its existence as provided by this subtitle. (V.A.C.S. Art. 5190.6, Sec. 4A(l).)

CHAPTER 502. PROVISIONS APPLICABLE TO TYPE A AND TYPE B CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. APPLICABILITY OF CHAPTER

[Sections 502.002-502.050 reserved for expansion]

SUBCHAPTER B. FINANCIAL PROVISIONS

Sec. 502.051. WRITTEN CONTRACT REQUIRED FOR BUSINESS RECRUITMENT OR DEVELOPMENT

[Sections 502.052-502.100 reserved for expansion]

SUBCHAPTER C. TRAINING REQUIREMENTS

Sec. 502.101. TRAINING REGARDING OPERATION OF CORPORATION

Sec. 502.102. PROVISION OF TRAINING SEMINAR

Sec. 502.103. PROOF OF COMPLIANCE

[Sections 502.104-502.150 reserved for expansion]

SUBCHAPTER D. REPORTING REQUIREMENTS

Sec. 502.151. REPORT TO COMPTROLLER

Sec. 502.152. NOTICE OF FAILURE TO REPORT

Sec. 502.153. REPORT TO LEGISLATURE

CHAPTER 502. PROVISIONS APPLICABLE TO TYPE A AND TYPE B CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. APPLICABILITY OF CHAPTER. This chapter applies only to Type A and Type B corporations. (New.)

[Sections 502.002-502.050 reserved for expansion]

SUBCHAPTER B. FINANCIAL PROVISIONS

Sec. 502.051. WRITTEN CONTRACT REQUIRED FOR BUSINESS RECRUITMENT OR DEVELOPMENT. (a) Except under a written contract approved by the corporation's board of directors, a corporation may not pay compensation, including a commission or fee, or another thing of value to a broker, agent, or other third party who:

(1) is involved in business recruitment or development; and

(2) is not an employee of the corporation.

(b) A corporation that violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed $10,000.

(c) The attorney general may bring an action to recover the civil penalty in a district court in Travis County or the county in which the violation occurred. (V.A.C.S. Art. 5190.6, Sec. 41.)

[Sections 502.052-502.100 reserved for expansion]

SUBCHAPTER C. TRAINING REQUIREMENTS

Sec. 502.101. TRAINING REGARDING OPERATION OF CORPORATION. (a) At least once in each 24-month period, the following persons associated with a corporation shall attend a training seminar regarding the operation of a corporation created under this subtitle:

(1) the municipal attorney, administrator, or clerk of the municipality that authorized the creation of the corporation; and

(2) the corporation's executive director or other person responsible for the corporation's daily administration.

(b) The training seminar must provide at least six hours of

instruction on topics relating to the legal and proper operation of a corporation created under this subtitle.

(c) The training seminar must be held at least four times each calendar year in a different geographical region of this state.

(d) A corporation may spend corporate revenue to pay for required attendance at the training seminar. (V.A.C.S. Art. 5190.6, Secs. 39(a), (b) (part), (d), (e) (part).)

Sec. 502.102. PROVISION OF TRAINING SEMINAR. (a) A training seminar under Section 502.101 must be provided by a statewide organization representing corporations created under this subtitle, except that if the economic development office determines that no statewide organization is able to provide a seminar as required by Section 502.101, the office, in conjunction with the attorney general and the comptroller, shall by rule develop the seminar. The office may enter into an agreement for provision of a seminar developed under those rules with a person the office determines is qualified to provide the seminar.

(b) A person providing a training seminar may:

(1) charge a reasonable fee for attending the seminar; and

(2) compensate an individual who provides instruction at the seminar. (V.A.C.S. Art. 5190.6, Secs. 39(e) (part), (f), (g).)

Sec. 502.103. PROOF OF COMPLIANCE. (a) A person providing a training seminar under Section 502.101 shall issue a certificate of completion, on a form approved by the comptroller, to each person

who completes the seminar.

(b) A corporation shall present proof of compliance with Section 502.101 to the comptroller by presenting the certificate of completion issued under Subsection (a) for each person required to attend a training seminar. The comptroller may impose an administrative penalty, in an amount not to exceed $1,000 for each violation, against a corporation that fails to present proof in accordance with this subsection. (V.A.C.S. Art. 5190.6, Secs. 39(c), (h).)

[Sections 502.104-502.150 reserved for expansion]

SUBCHAPTER D. REPORTING REQUIREMENTS

Sec. 502.151. REPORT TO COMPTROLLER. (a) Not later than February 1 of each year, the board of directors of a corporation shall submit a report to the comptroller that includes:

(1) a statement of:

(A) the corporation's primary economic development objectives;

(B) the corporation's total revenue during the preceding fiscal year;

(C) the corporation's total expenditures during the preceding fiscal year; and

(D) the corporation's total expenditures during the preceding fiscal year in each of the following categories:

(i) administration;

(ii) personnel;

(iii) marketing or promotion;

(iv) direct business incentives;

(v) job training;

(vi) debt service;

(vii) capital costs;

(viii) affordable housing; and

(ix) payments to taxing units, including school districts;

(2) a list of the corporation's capital assets, including land and buildings; and

(3) any other information the comptroller requires to determine the use of the sales and use tax imposed under Chapter 504 or 505 to encourage economic development in this state.

(b) The report:

(1) must be in the form required by the comptroller; and

(2) may not exceed one page. (V.A.C.S. Art. 5190.6, Secs. 4C(a), (b).)

Sec. 502.152. NOTICE OF FAILURE TO REPORT. (a) If a corporation does not submit a report as required by Section 502.151 or does not include sufficient information in the report, the comptroller shall provide to the corporation written notice of the failure, including information on how to correct the failure.

(b) The comptroller may impose an administrative penalty of $200 against a corporation that does not correct the failure before the 31st day after the date the corporation receives notice under Subsection (a). The comptroller by rule shall prescribe the procedures for imposition of the administrative penalty. The rules must protect the corporation's due process rights. (V.A.C.S. Art.

5190.6, Secs. 4C(c), (d), (e).)

Sec. 502.153. REPORT TO LEGISLATURE. Not later than November 1 of each even-numbered year, the comptroller shall submit to the legislature a report on the use of the sales and use tax imposed under Chapters 504 and 505 to encourage economic development in this state. On request, the comptroller shall provide without charge a copy of the report to a corporation. (V.A.C.S. Art. 5190.6, Secs. 4C(f), (g).)

CHAPTER 503. TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.001. STATUS AS CORPORATION

Sec. 503.002. ACTION ON BEHALF OF STATE

Sec. 503.003. INCONSISTENCY WITH OTHER PROVISION OF SUBTITLE

[Sections 503.004-503.050 reserved for expansion]

SUBCHAPTER B. OPERATION OF CORPORATION

Sec. 503.051. BOARD OF DIRECTORS

Sec. 503.052. LIMITATION ON LIABILITY

Sec. 503.053. EXPENDITURES; APPROVAL OF PROGRAMS

Sec. 503.054. USE OF MONEY BY TEXAS ECONOMIC DEVELOPMENT BANK

Sec. 503.055. DEPOSITORY

[Sections 503.056-503.100 reserved for expansion]

SUBCHAPTER C. SPECIFIC POWERS AND LIMITATIONS ON POWERS

Sec. 503.101. FINANCING FOR USERS

Sec. 503.102. ADDITIONAL PROJECTS AUTHORIZED

Sec. 503.103. BONDS

CHAPTER 503. TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.001. STATUS AS CORPORATION. (a) The Texas Small Business Industrial Development Corporation is a corporation under this subtitle and shall be organized and governed in accordance with this subtitle.

(b) The corporation has the powers of and is subject to the limitations applicable to a corporation under this subtitle, except as otherwise provided by this chapter. (V.A.C.S. Art. 5190.6, Sec. 4(b) (part).)

Sec. 503.002. ACTION ON BEHALF OF STATE. (a) For purposes of this subtitle, this state is considered to be the unit that authorized creation of the Texas Small Business Industrial Development Corporation.

(b) The corporation shall act on behalf of this state to implement the public purposes of this subtitle. (V.A.C.S. Art. 5190.6, Sec. 4(b) (part).)

Sec. 503.003. INCONSISTENCY WITH OTHER PROVISION OF SUBTITLE. To the extent this chapter is inconsistent with another provision of this subtitle relating to the existence, powers, limitations, organization, operation, or affairs of the Texas Small Business Industrial Development Corporation, this chapter controls. (V.A.C.S. Art. 5190.6, Sec. 4(b) (part).)

[Sections 503.004-503.050 reserved for expansion]

SUBCHAPTER B. OPERATION OF CORPORATION

Sec. 503.051. BOARD OF DIRECTORS. (a) The governor shall appoint the board of directors of the Texas Small Business Industrial Development Corporation.

(b) The governor or the governor's designee and the executive director of the economic development office serve as nonvoting ex officio members of the board. (V.A.C.S. Art. 5190.6, Sec. 4(d).)

Sec. 503.052. LIMITATION ON LIABILITY. A director, officer, employee, or member of the economic development office acting on behalf of the Texas Small Business Industrial Development Corporation is not personally liable:

(1) for damage, loss, or injury resulting from the performance of the person's duties under this subtitle; or

(2) on any commitment or agreement executed on behalf of the corporation under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 4(e).)

Sec. 503.053. EXPENDITURES; APPROVAL OF PROGRAMS. (a) Expenses that the Texas Small Business Industrial Development Corporation incurs in operating and administering the corporation's programs and affairs, including expenses for employees and program assistance or development, shall be paid out of fees collected or revenue generated under this subtitle.

(b) Each program or expenditure of the corporation must be approved on behalf of this state by the Texas Economic Development Bank. (V.A.C.S. Art. 5190.6, Sec. 4(f).)

Sec. 503.054. USE OF MONEY BY TEXAS ECONOMIC DEVELOPMENT

BANK. Money of the Texas Small Business Industrial Development Corporation may not be used or made available for use by the Texas Economic Development Bank except to reimburse the bank for expenses the bank incurs in its official capacity on behalf of the corporation. (V.A.C.S. Art. 5190.6, Sec. 4(g) (part).)

Sec. 503.055. DEPOSITORY. Revenue and other money of the Texas Small Business Industrial Development Corporation shall be deposited with one or more financial institutions that the corporation's board of directors chooses for that purpose. (V.A.C.S. Art. 5190.6, Sec. 4(g) (part).)

[Sections 503.056-503.100 reserved for expansion]

SUBCHAPTER C. SPECIFIC POWERS AND LIMITATIONS ON POWERS

Sec. 503.101. FINANCING FOR USERS. In addition to exercising any other power of a corporation under this subtitle, the Texas Small Business Industrial Development Corporation may:

(1) make a loan through the purchase of or participation in, and pledge, negotiate, or sell, bonds, notes, and other evidences of indebtedness of a user to finance a project that represents a direct loan, a grant, or a loan participation, or the repayment of which is wholly or partly insured or otherwise guaranteed, by the United States, this state, or an agency, department, or instrumentality of the United States or this state; and

(2) otherwise directly or indirectly provide financing for a user in the manner that the corporation determines to be necessary or convenient for the performance of the corporation's public purposes, functions, and duties under this

subtitle. (V.A.C.S. Art. 5190.6, Sec. 4(h).)

Sec. 503.102. ADDITIONAL PROJECTS AUTHORIZED. (a) Notwithstanding any other provision of this subtitle, "project" includes use of amounts financed through the Texas Small Business Industrial Development Corporation's purchase of bonds, notes, or other evidences of indebtedness of a user under this chapter if the corporation's board of directors finds the use to be required or suitable for promoting economic development in this state.

(b) A finding under Subsection (a) may be based solely on review by the corporation's board of directors of the criteria used to determine eligibility of a user to obtain a direct loan, a grant, a loan participation, insurance, or another guarantee from the United States, this state, or an agency or instrumentality of the United States or this state. (V.A.C.S. Art. 5190.6, Sec. 4(i) (part).)

Sec. 503.103. BONDS. (a) The Texas Small Business Industrial Development Corporation may not issue bonds.

(b) All bonds issued and delivered by the Texas Small Business Industrial Development Corporation before September 1, 1987, and all proceedings authorizing those bonds are incontestable.

(c) Proceeds of bonds issued before September 1, 1987, may be used:

(1) to pay all or part of the cost of a project regardless of whether the cost or project was, before that date, within the definitions of those terms under the Texas Department of Commerce Act, Chapter 374, Acts of the 70th Legislature, Regular

Session, 1987; or

(2) for any other purpose authorized by this subtitle.

(V.A.C.S. Art. 5190.6, Secs. 4(c) (part), (i) (part), (j).)

CHAPTER 504. TYPE A CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITION

Sec. 504.002. APPLICABILITY OF CHAPTER

Sec. 504.003. AUTHORITY TO CREATE CORPORATION

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Sec. 504.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS

[Sections 504.006-504.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF CORPORATION

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Sec. 504.052. OFFICERS

Sec. 504.053. QUORUM

Sec. 504.054. LOCATION OF BOARD MEETINGS

Sec. 504.055. RESTRICTIONS ON REGISTERED AGENT AND OFFICE

[Sections 504.056-504.100 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 504.101. APPLICABILITY OF OTHER LAW; CONFLICTS

Sec. 504.102. CONTRACT WITH OTHER PRIVATE CORPORATION

Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF PROJECT; EXCEPTIONS

Sec. 504.104. ASSUMPTION OR PAYMENT OF PREEXISTING DEBT PROHIBITED

Sec. 504.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSE

Sec. 504.106. EMINENT DOMAIN

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[Sections 504.108-504.150 reserved for expansion]

SUBCHAPTER D. AUTHORIZATION FOR ADDITIONAL PROJECTS

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Sec. 504.155. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS

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Sec. 504.202. AGREEMENT TO INVEST IN EXTRATERRITORIAL PROJECT

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Sec. 504.302. PAYMENT OF MAINTENANCE AND OPERATING COSTS; ELECTION

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Sec. 504.353. TERMINATION OF EXISTENCE OF CORPORATION

CHAPTER 504. TYPE A CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITION. In this chapter, "authorizing municipality" means the municipality that authorizes the creation of a Type A corporation. (New.)

Sec. 504.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality that:

(1) is located in a county that has a population of 500,000 or less; or

(2) has a population of less than 50,000 and:

(A) is located in two or more counties, one of which has a population of 500,000 or more;

(B) is located within the territorial limits of, but has not elected to become a part of, a metropolitan rapid transit authority:

(i) the principal municipality of which has a population of less than 1.9 million; and

(ii) that was created before January 1, 1980, under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, and is operating under Chapter 451, Transportation Code; or

(C) is located within the territorial limits of, but has not elected to become a part of, a regional transportation authority:

(i) the principal municipality of which has a population of more than 750,000; and

(ii) that was created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979, or Chapter 452, Transportation Code, and is operating under Chapter 452, Transportation Code. (V.A.C.S. Art. 5190.6, Sec. 4A(a).)

Sec. 504.003. AUTHORITY TO CREATE CORPORATION. (a) A municipality may authorize the creation under this subtitle of a Type A corporation.

(b) A municipality may not authorize the creation of more than one Type A corporation. (V.A.C.S. Art. 5190.6, Sec. 4A(b)(1) (part).)

Sec. 504.004. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a Type A corporation must state that the corporation is governed by this chapter. (V.A.C.S. Art. 5190.6, Sec. 4A(b)(1) (part).)

Sec. 504.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS. Sections 501.203, 501.205, 501.251-501.254, 501.255(a) and (b), 501.256, and 501.257 do not apply to a corporation under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4A(h).)

[Sections 504.006-504.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 504.051. BOARD OF DIRECTORS. (a) The board of directors of a Type A corporation consists of at least five directors.

(b) A director is appointed by the governing body of the authorizing municipality, serves at the pleasure of that governing body, and may be removed by that governing body at any time without

cause.

(c) The governing body of the authorizing municipality shall determine the number of directors and the length of each director's term, except that the length of a director's term may not exceed six years. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

Sec. 504.052. OFFICERS. The board of directors of a Type A corporation shall appoint:

(1) a president;

(2) a secretary; and

(3) other officers of the corporation that the governing body of the authorizing municipality considers necessary. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

Sec. 504.053. QUORUM. A majority of the entire membership of the board of directors of a Type A corporation is a quorum. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

Sec. 504.054. LOCATION OF BOARD MEETINGS. The board of directors of a Type A corporation shall conduct each board meeting within the boundaries of the authorizing municipality. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

Sec. 504.055. RESTRICTIONS ON REGISTERED AGENT AND OFFICE. (a) The registered agent of a Type A corporation must be an individual who is a resident of this state.

(b) The registered office of a Type A corporation must be located within the boundaries of the authorizing municipality. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

[Sections 504.056-504.100 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 504.101. APPLICABILITY OF OTHER LAW; CONFLICTS. A Type A corporation has the powers and is subject to the limitations of a corporation created under another provision of this subtitle outside of this chapter. To the extent of a conflict between this chapter and another provision of this subtitle, this chapter prevails. (V.A.C.S. Art. 5190.6, Sec. 4A(b)(1) (part).)

Sec. 504.102. CONTRACT WITH OTHER PRIVATE CORPORATION. A Type A corporation may contract with another private corporation to:

(1) carry out an industrial development program or objective; or

(2) assist with the development or operation of an economic development program or objective consistent with the purposes and duties provided by this subtitle. (V.A.C.S. Art. 5190.6, Sec. 4A(b)(1) (part).)

Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF PROJECT; EXCEPTIONS. (a) Except as otherwise provided by this section, a Type A corporation may not undertake a project the primary purpose of which is to provide:

(1) a transportation facility;

(2) a solid waste disposal facility;

(3) a sewage facility;

(4) a facility for furnishing water to the general public; or

(5) an air or water pollution control facility.

(b) A Type A corporation may provide a facility described by

Subsection (a) to benefit property acquired for a project that has another primary purpose.

(c) A Type A corporation may undertake a project the primary purpose of which is to provide:

(1) a general aviation business service airport that is an integral part of an industrial park;

(2) a port-related facility to support waterborne commerce; or

(3) an airport-related facility, if the authorizing municipality:

(A) is wholly or partly located within 25 miles of an international border; and

(B) has, at the time the project is approved by the corporation as provided by this subtitle:

(i) a population of less than 50,000; or

(ii) an average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period for which data is available that precedes the date the project is approved. (V.A.C.S. Art. 5190.6, Sec. 4A(i).)

Sec. 504.104. ASSUMPTION OR PAYMENT OF PREEXISTING DEBT PROHIBITED. A Type A corporation may not:

(1) assume a debt that existed before the date the authorizing municipality authorized the creation of the corporation; or

(2) make an expenditure to pay the principal of or interest on a debt that existed before the date prescribed by

Subdivision (1). (V.A.C.S. Art. 5190.6, Sec. 4A(q).)

Sec. 504.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSE. (a) Except as provided by Subsection (b), a Type A corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.

(b) A Type A corporation may spend not more than 25 percent of the corporate revenues for promotional purposes if the authorizing municipality:

(1) is located in two counties;

(2) has a population of less than 24,250 according to the 1990 federal census; and

(3) is located wholly or partly within 10 miles of a federal military reservation. (V.A.C.S. Art. 5190.6, Secs. 4A(b)(1) (part), (2).)

Sec. 504.106. EMINENT DOMAIN. A Type A corporation may not exercise the power of eminent domain except by action of the governing body of the authorizing municipality. (V.A.C.S. Art. 5190.6, Sec. 4A(g).)

Sec. 504.107. LIABILITY. (a) The following are not liable for damages arising from the performance of a governmental function of a Type A corporation or the authorizing municipality:

(1) the corporation;

(2) a director of the corporation;

(3) the municipality;

(4) a member of the governing body of the municipality; and

(5) an employee of the corporation or municipality.

(b) For purposes of Chapter 101, Civil Practice and Remedies Code (Texas Tort Claims Act), a Type A corporation is a governmental unit and the corporation's actions are governmental functions. (V.A.C.S. Art. 5190.6, Sec. 4A(j).)

[Sections 504.108-504.150 reserved for expansion]

SUBCHAPTER D. AUTHORIZATION FOR ADDITIONAL PROJECTS

Sec. 504.151. DEFINITIONS. In this subchapter:

(1) "Related infrastructure" has the meaning assigned by Section 334.001.

(2) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility:

(A) that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events; and

(B) for which a fee is charged or is planned to be charged for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events. (V.A.C.S. Art. 5190.6, Sec. 4A(s)(5), as added Acts 75th Leg., R.S., Ch. 551.)

Sec. 504.152. ELECTION TO AUTHORIZE PROJECTS APPLICABLE TO TYPE B CORPORATIONS. (a) An authorizing municipality may submit to the voters of the municipality a ballot proposition that authorizes the Type A corporation to use the sales and use tax imposed under this chapter, including any amount previously authorized and collected, for a specific project or for a specific category of projects that do not qualify under this chapter but qualify under Chapter 505, including a sports venue and related infrastructure.

(b) The project or category of projects described by

Subsection (a) must be clearly described on the ballot so that a voter is able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales and use tax, the ballot language must clearly state that fact.

(c) The authorizing municipality may submit the ballot proposition at:

(1) an election held under another provision of this subtitle, including the election at which the proposition to initially approve the adoption of a sales and use tax for the benefit of the corporation is submitted; or

(2) a separate election to be held on a uniform election date. (V.A.C.S. Art. 5190.6, Secs. 4A(s)(1) (part), (2).)

Sec. 504.153. PUBLIC HEARING PRECEDING ELECTION. Before an election may be held under Section 504.152, a public hearing must be held in the authorizing municipality to inform the municipality's residents of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, notice of the date, time, place, and subject of the hearing must be published in a newspaper with general circulation in the municipality in which the project is located. The notice should be published on a weekly basis until the date of the hearing. (V.A.C.S. Art. 5190.6, Sec. 4A(s)(3), as added Acts 75th Leg., R.S., Chs. 551, 958.)

Sec. 504.154. LIMITATION ON SUBSEQUENT ELECTION. If a majority of the voters voting on the issue do not approve a specific

project or a specific category of projects at an election under Section 504.152, another election concerning the same project or category of projects may not be held before the first anniversary of the date of the most recent election disapproving the project or category of projects. (V.A.C.S. Art. 5190.6, Sec. 4A(s)(4).)

Sec. 504.155. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS. Prior approval of a specific project at an election or completion of a specific project approved at an election does not prevent an authorizing municipality from seeking voter approval of an additional project or category of projects under this subchapter to be funded from the same sales and use tax. (V.A.C.S. Art. 5190.6, Sec. 4A(s)(1) (part).)

Sec. 504.156. APPLICABILITY OF CHAPTER TO ADDITIONAL PROJECT. A project undertaken under this subchapter is governed by this chapter, including the provisions of this chapter relating to the authorization and expiration of a sales and use tax. (V.A.C.S. Art. 5190.6, Sec. 4A(s)(5), as added Acts 75th Leg., R.S., Ch. 958.)

[Sections 504.157-504.200 reserved for expansion]

SUBCHAPTER E. INVESTMENT AGREEMENTS

Sec. 504.201. DEFINITIONS. In this subchapter:

(1) "Base taxable value" means the taxable value of property located in the defined area of a project as of January 1 of the year in which the agreement is entered into under Section 504.202.

(2) "Corresponding taxing unit" means another taxing unit that:

(A) is of the same type of political subdivision

as a taxing unit that enters into an agreement under Section 504.202; and

(B) taxes property located in the defined area of a project that is the subject of the agreement.

(3) "Taxing unit" has the meaning assigned by Section 1.04, Tax Code. (V.A.C.S. Art. 5190.6, Secs. 4A(u)(1), (5) (part), (6) (part).)

Sec. 504.202. AGREEMENT TO INVEST IN EXTRATERRITORIAL PROJECT. (a) A taxing unit may enter into an agreement with a Type A corporation to invest in a project that is undertaken by the corporation and that is not located in the territory of the taxing unit. A Type A corporation may enter into an agreement under this section with more than one taxing unit.

(b) Before entering into the agreement, the Type A corporation undertaking the project must designate a defined area that includes the territory where the project is to be located.

(c) The agreement must state the base taxable value of the property in the defined area of the project.

(d) The agreement may provide that the taxing unit is entitled to receive from the Type A corporation, in exchange for the investment, an amount equal to a specified percentage of the tax revenue from taxes imposed by the corresponding taxing unit on the taxable value of the property in the defined area that exceeds the base taxable value, during the period the corresponding taxing unit imposes taxes on that property. (V.A.C.S. Art. 5190.6, Secs. 4A(u)(2), (3), (4), (5) (part).)

Sec. 504.203. REQUIRED AGREEMENT WITH CORRESPONDING TAXING

UNIT. A Type A corporation that enters into an agreement under Section 504.202 shall enter into an agreement with a corresponding taxing unit to recover the amount paid by the corporation to a taxing unit as provided by Section 504.202(d). (V.A.C.S. Art. 5190.6, Sec. 4A(u)(6) (part).)

Sec. 504.204. EFFECT ON AUTHORITY UNDER OTHER LAW. (a) This subchapter does not affect a taxing unit's authority to grant a tax abatement.

(b) This subchapter does not affect a Type A corporation's authority to invest in a project or recover its total investment by contract under Section 501.159. (V.A.C.S. Art. 5190.6, Secs. 4A(u)(7), (8).)

[Sections 504.205-504.250 reserved for expansion]

SUBCHAPTER F. SALES AND USE TAX

Sec. 504.251. TAX AUTHORIZED. The authorizing municipality may adopt a sales and use tax for the benefit of a Type A corporation if the tax is approved by a majority of the voters of the municipality voting at an election held for that purpose. (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

Sec. 504.252. SALES TAX. (a) If the authorizing municipality adopts the tax under Section 504.251, a tax is imposed on the receipts from the sale at retail of taxable items within the municipality at the rate approved by the voters.

(b) The rate of the tax imposed under Subsection (a) must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent. (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

Sec. 504.253. USE TAX. (a) If the authorizing municipality

adopts the tax under Section 504.251, an excise tax is imposed on the use, storage, or other consumption within the municipality of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the municipality.

(b) The rate of the excise tax is the same as the rate of the sales tax portion of the sales and use tax and is applied to the sales price of the taxable items. (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

Sec. 504.254. COMBINED TAX RATE. (a) An authorizing municipality may not adopt a rate under this chapter that, when added to the rates of all other sales and use taxes imposed by the authorizing municipality and other political subdivisions of this state having territory in the authorizing municipality, would result in a combined rate exceeding two percent.

(b) An election adopting a rate that would result in a rate exceeding the combined rate limit under Subsection (a) has no effect. (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

Sec. 504.255. APPLICABILITY OF TAX CODE. (a) Chapter 321, Tax Code, governs an election to approve the adoption of the sales and use tax under this chapter and governs the imposition, computation, administration, governance, use, and abolition of the tax except as inconsistent with this chapter.

(b) The tax imposed under this chapter takes effect as provided by Section 321.102(a), Tax Code. (V.A.C.S. Art. 5190.6, Sec. 4A(e).)

Sec. 504.256. BALLOT. In an election to adopt the sales and use tax under this chapter, the ballot shall be printed to provide

for voting for or against the proposition: "The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of _____ of one percent" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate). (V.A.C.S. Art. 5190.6, Sec. 4A(m).)

Sec. 504.257. LIMITATION ON DURATION OF TAX. (a) At an election held under Section 504.251 or 504.258, the authorizing municipality may also allow the voters to vote on a ballot proposition to limit the period for imposition of a sales and use tax. If an authorizing municipality elects to limit the period for imposition of the tax, the following phrase shall be added to the end of the ballot proposition prescribed by Section 504.256: "to be imposed for _____ years" (the number of years to be inserted as appropriate). The governing body of the municipality shall set the expiration date of the proposed tax to occur on the appropriate anniversary of the effective date of the tax.

(b) A sales and use tax imposed for a limited period under this section expires on the date set by the governing body of the authorizing municipality under Subsection (a) unless the tax is repealed on an earlier date by a majority of the voters voting in an election held in the municipality. If an election to abolish the tax is held, Sections 321.102(a) and 321.402(b), Tax Code, apply to the date of repeal.

(c) If an authorizing municipality reduces the rate of an additional sales and use tax under Chapter 321, Tax Code, to impose a tax under this chapter for a limited period as provided by this section, and the municipality does not have an election to change

the rate of the additional sales and use tax before the tax under this chapter expires, on the date the tax under this chapter expires, the rate of the municipality's additional sales and use tax returns to the rate in effect immediately before the tax under this chapter was adopted. The municipality is not required to hold an election under Chapter 321, Tax Code, to impose the additional sales and use tax at that rate.

(d) A sales and use tax that is approved without limiting the period during which the tax is imposed remains in effect until repealed by election.

(e) An authorizing municipality that has imposed a tax under this chapter may extend the period of the tax's imposition or reimpose the tax only if the extension or reimposition is approved by a majority of the voters of the municipality voting at an election held for that purpose. (V.A.C.S. Art. 5190.6, Sec. 4A(n) (part).)

Sec. 504.258. ELECTION TO REDUCE OR INCREASE TAX RATE. (a) An authorizing municipality that has imposed a sales and use tax under this chapter may, in the same manner and by the same procedure as the municipality imposed the tax, reduce or increase the tax rate by a majority of the voters of the municipality voting at an election held for that purpose.

(b) On petition of 10 percent or more of the registered voters of the authorizing municipality requesting an election to reduce or increase the tax rate under this chapter, the governing body of the municipality shall order an election on the issue.

(c) The tax rate may be:

(1) reduced in one or more increments of one-eighth of one percent, to a minimum rate of one-eighth of one percent; or

(2) increased in one or more increments of one-eighth of one percent, to a maximum rate of one-half of one percent.

(d) The ballot for an election under this section shall be printed in the same manner as the ballot under Section 504.256. (V.A.C.S. Art. 5190.6, Sec. 4A(o).)

Sec. 504.259. REDUCTION OF TAX WITHIN REGIONAL TRANSPORTATION AUTHORITY. Notwithstanding any other provision of this chapter, a tax under this chapter imposed by an authorizing municipality that is located within the territorial limits of a regional transportation authority and that has been added to the territory of the authority under Section 452.6025, Transportation Code, is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code. (V.A.C.S. Art. 5190.6, Sec. 4A(o-1).)

Sec. 504.260. LIMITED SALES AND USE TAX FOR SPECIFIC PROJECT. (a) At an election held under Section 504.251 or 504.258, the authorizing municipality may also allow the voters to vote on a ballot proposition to limit the use of the sales and use tax to a specific project. If an authorizing municipality elects to limit the use of the tax to a specific project, in the ballot proposition prescribed by Section 504.256 or 504.261 a description of the project shall be substituted for the words "new and expanded business enterprises."

(b) When the last of a Type A corporation's obligations have been satisfied regarding the specific project for which the sales

and use tax was limited, the corporation shall send to the comptroller a notice stating that the sales and use tax imposed for the specific project may not be collected after the last day of the first calendar quarter beginning after the date of notification. A sales and use tax imposed for a specific project under this section may not be collected after the last day of the first calendar quarter beginning after the date of the notification to the comptroller. The state shall forward revenue collected after the obligations for the specific project have been satisfied to the governing body of the authorizing municipality to be used to pay current bonded indebtedness of the municipality.

(c) A Type A corporation created to perform a specific project under this section may retain its corporate existence and perform any other project approved by the voters of the authorizing municipality at an election held under Section 504.251 or 504.258. (V.A.C.S. Art. 5190.6, Sec. 4A(r).)

Sec. 504.261. CONCURRENT ELECTION WITH ELECTION UNDER TAX CODE. (a) At an election to adopt, reduce, increase, or abolish the sales and use tax under this chapter, the authorizing municipality may also allow voters to vote on the same ballot on a proposition to impose, reduce, increase, or abolish the additional sales and use tax imposed under Section 321.101(b), Tax Code, if the municipality is authorized by Chapter 321, Tax Code, to impose, reduce, increase, or abolish the additional sales and use tax. Except as provided by Subsection (b), the municipality must follow the procedures of Chapter 321, Tax Code, in relation to the imposition, reduction, increase, or abolishment of the additional

sales and use tax imposed under Section 321.101(b), Tax Code.

(b) In an election to impose, reduce, increase, or abolish the tax under this chapter and the additional sales and use tax, the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax within the municipality for the promotion and development of new and expanded business enterprises at the rate of _____ of one percent (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate) and the adoption of an additional sales and use tax within the municipality at the rate of _____ of one percent to be used to reduce the property tax rate" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate). (V.A.C.S. Art. 5190.6, Sec. 4A(p).)

Sec. 504.262. PROCEDURES ON EXPIRATION OF TAX. (a) Before the 60th day before the date that a sales and use tax imposed under this chapter is to expire, the governing body of the authorizing municipality imposing the tax shall send to the comptroller a notice stating the expiration date of the tax.

(b) The state shall forward revenue collected from the imposition of the tax after the tax's expiration date to the governing body of the authorizing municipality to be used to pay current bonded indebtedness of the municipality. (V.A.C.S. Art. 5190.6, Sec. 4A(n) (part).)

[Sections 504.263-504.300 reserved for expansion]

SUBCHAPTER G. USE OF TAX PROCEEDS

Sec. 504.301. DELIVERY AND GENERAL USE OF TAX PROCEEDS. On the authorizing municipality's receipt from the comptroller of the

proceeds of the sales and use tax imposed under this chapter, the authorizing municipality shall deliver the proceeds to the Type A corporation for use in carrying out the corporation's functions. (V.A.C.S. Art. 5190.6, Sec. 4A(f) (part).)

Sec. 504.302. PAYMENT OF MAINTENANCE AND OPERATING COSTS; ELECTION. (a) The costs of a publicly owned and operated project purchased or constructed under this chapter include the maintenance and operating costs of the project.

(b) The proceeds of the sales and use tax imposed under this chapter may be used to pay the maintenance and operating costs of a project unless, not later than the 60th day after the date notice of the specific use of the tax proceeds is first published, the governing body of the authorizing municipality of the Type A corporation undertaking the project receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the tax proceeds may be used to pay the maintenance and operating costs of the project. (V.A.C.S. Art. 5190.6, Sec. 4A(c-1).)

Sec. 504.303. PAYMENT OF BONDS. The proceeds of the sales and use tax imposed under this chapter may be used to pay the principal of, interest on, and other costs relating to the Type A corporation's bonds, but the bonds or any instrument related to the bonds may not give a bondholder a right to demand payment from tax proceeds in excess of the proceeds collected from the tax imposed under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4A(f) (part).)

Sec. 504.304. PAYMENT FOR CLEANUP OF CONTAMINATED PROPERTY; ELECTION. (a) The economic development office, with the

assistance of the Texas Commission on Environmental Quality, may encourage a Type A corporation to use proceeds from the sales and use tax imposed under this chapter for the cleanup of contaminated property.

(b) A Type A corporation may use proceeds from the sales and use tax for the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the voters of the authorizing municipality voting at an election held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property." (V.A.C.S. Art. 5190.6, Sec. 4A(t).)

Sec. 504.305. PAYMENT FOR JOB TRAINING. The proceeds of the sales and use tax imposed under this chapter may also be used to pay expenses relating to job training incurred by the Type A corporation under Section 501.162. (V.A.C.S. Art. 5190.6, Sec. 4A(f) (part).)

[Sections 504.306-504.350 reserved for expansion]

SUBCHAPTER H. TERMINATION OF CORPORATION

Sec. 504.351. ELECTION TO TERMINATE EXISTENCE OF CORPORATION ON PETITION. (a) On petition of 10 percent or more of the registered voters of an authorizing municipality requesting an election on the termination of the existence of the Type A corporation, the governing body of the municipality shall order an election on the issue.

(b) The authorizing municipality shall hold the election on the next available uniform election date that occurs after the time

required by Section 3.005, Election Code. (V.A.C.S. Art. 5190.6, Sec. 4A(k) (part).)

Sec. 504.352. BALLOT. The ballot for an election held under Section 504.351 shall be printed to provide for voting for or against the proposition: "Termination of the _____ (name of the corporation)." (V.A.C.S. Art. 5190.6, Sec. 4A(k) (part).)

Sec. 504.353. TERMINATION OF EXISTENCE OF CORPORATION. (a) If a majority of voters voting on the issue at an election held under Section 504.351 approve the termination, the Type A corporation shall:

(1) continue operations only as necessary to pay the principal of and interest on the corporation's bonds and to meet obligations incurred before the date of the election; and

(2) dispose of the corporation's assets and apply the proceeds to satisfy obligations described by Subdivision (1), to the extent practicable.

(b) When the last of the Type A corporation's obligations are satisfied, any remaining assets of the corporation shall be transferred to the authorizing municipality, and the existence of the corporation is terminated.

(c) A tax imposed under this chapter may not be collected after the last day of the first calendar quarter that begins after the Type A corporation notifies the comptroller that the last of the corporation's obligations has been satisfied. (V.A.C.S. Art. 5190.6, Sec. 4A(k) (part).)

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CHAPTER 505. TYPE B CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. DEFINITION. In this chapter, "authorizing municipality" means the municipality that authorizes the creation of a Type B corporation. (New.)

Sec. 505.002. APPLICABILITY OF CHAPTER. This chapter applies only to:

(1) a municipality:

(A) that is located in a county with a population of 500,000 or more; and

(B) in which the combined rate of all sales and use taxes imposed by the municipality, this state, and other political subdivisions of this state having territory in the municipality does not exceed 8.25 percent on the date of any election held under or made applicable to this chapter;

(2) a municipality:

(A) that has a population of 400,000 or more;

(B) that is located in more than one county; and

(C) in which the combined rate of all sales and use taxes imposed by the municipality, this state, and other political subdivisions of this state having territory in the municipality, including taxes imposed under this chapter, does not exceed 8.25 percent; or

(3) a municipality to which Chapter 504 applies. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(1).)

Sec. 505.003. AUTHORITY TO CREATE CORPORATION. (a) A municipality may authorize the creation under this subtitle of a Type B corporation.

(b) A municipality may not authorize the creation of more than one Type B corporation. (V.A.C.S. Art. 5190.6, Sec. 4B(b) (part).)

Sec. 505.004. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a Type B corporation:

(1) must state that the corporation is governed by this chapter; and

(2) may include in the corporation's name any word or phrase the authorizing municipality specifies. (V.A.C.S. Art. 5190.6, Sec. 4B(b) (part).)

Sec. 505.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS. Sections 501.203, 501.205, 501.251-501.254, 501.255(a) and (b), 501.256, and 501.257 do not apply to a corporation under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4B(l).)

[Sections 505.006-505.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 505.051. BOARD OF DIRECTORS. (a) The board of directors of a Type B corporation consists of seven directors.

(b) A director is appointed by the governing body of the authorizing municipality for a two-year term.

(c) A director may be removed by the governing body of the authorizing municipality at any time without cause. (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

Sec. 505.052. RESTRICTION ON BOARD MEMBERSHIP. (a) Each director of a Type B corporation authorized to be created by a municipality with a population of 20,000 or more must be a resident of the municipality.

(b) Each director of a Type B corporation authorized to be created by a municipality with a population of less than 20,000 must:

(1) be a resident of the municipality;

(2) be a resident of the county in which the major part of the area of the municipality is located; or

(3) reside:

(A) within 10 miles of the municipality's boundaries; and

(B) in a county bordering the county in which most of the area of the municipality is located.

(c) Three directors of a Type B corporation must be persons who are not employees, officers, or members of the governing body of the authorizing municipality.

(d) Notwithstanding Subsections (a)-(c), if a municipality

terminates a Type A corporation's existence and authorizes the creation of a Type B corporation, a person serving as a director of the Type A corporation at the time of termination may serve on the board of directors of the Type B corporation. (V.A.C.S. Art. 5190.6, Secs. 4B(c) (part), (e-1).)

Sec. 505.053. OFFICERS. The board of directors of a Type B corporation shall appoint:

(1) a president;

(2) a secretary; and

(3) other officers of the corporation the governing body of the authorizing municipality considers necessary. (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

Sec. 505.054. QUORUM. A majority of the entire membership of the board of directors of a Type B corporation is a quorum. (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

Sec. 505.055. LOCATION OF BOARD MEETINGS. The board of directors of a Type B corporation shall conduct all meetings within the boundaries of the authorizing municipality. (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

Sec. 505.056. RESTRICTIONS ON REGISTERED AGENT AND OFFICE. (a) The registered agent of a Type B corporation must be an individual who is a resident of this state.

(b) The registered office of a Type B corporation must be located within the boundaries of the authorizing municipality. (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

[Sections 505.057-505.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 505.101. APPLICABILITY OF OTHER LAW; CONFLICTS. A Type B corporation has the powers granted by this chapter and by other chapters of this subtitle and is subject to the limitations of a corporation created under another provision of this subtitle. To the extent of a conflict between this chapter and another provision of this subtitle, this chapter prevails. (V.A.C.S. Art. 5190.6, Sec. 4B(b) (part).)

Sec. 505.102. CONTRACT WITH OTHER PRIVATE CORPORATION. A Type B corporation may contract with another private corporation to:

(1) carry out an industrial development program or objective; or

(2) assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by this subtitle. (V.A.C.S. Art. 5190.6, Sec. 4B(b) (part).)

Sec. 505.103. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSES. A Type B corporation may spend not more than 10 percent of the corporate revenues for promotional purposes. (V.A.C.S. Art. 5190.6, Sec. 4B(b) (part).)

Sec. 505.104. BOND REPAYMENT. (a) Bonds or other obligations that mature in 30 years or less and that are issued to pay the costs of projects of a type added to the definition of "project" by Subchapter D may be made payable from any source of funds available to the Type B corporation, including the proceeds of a sales and use tax imposed under this chapter.

(b) Bonds or other obligations that by their terms are payable from the tax proceeds:

(1) may not be paid wholly or partly from any property taxes imposed or to be imposed by the authorizing municipality; and

(2) are not a debt of and do not give rise to a claim for payment against the authorizing municipality, except as to sales and use tax revenue held by the municipality and required under this chapter to be delivered to the Type B corporation. (V.A.C.S. Art. 5190.6, Sec. 4B(h).)

Sec. 505.105. EMINENT DOMAIN. A Type B corporation may exercise the power of eminent domain only:

(1) on approval of the action by the governing body of the authorizing municipality; and

(2) in accordance with and subject to the laws applicable to the authorizing municipality. (V.A.C.S. Art. 5190.6, Sec. 4B(j).)

Sec. 505.106. LIABILITY. (a) The following are not liable for damages arising from the performance of a governmental function of a Type B corporation or the authorizing municipality:

(1) the corporation;

(2) a director of the corporation;

(3) the municipality;

(4) a member of the governing body of the municipality; or

(5) an employee of the corporation or municipality.

(b) For purposes of Chapter 101, Civil Practice and Remedies Code, a Type B corporation is a governmental unit and the

corporation's actions are governmental functions. (V.A.C.S. Art. 5190.6, Sec. 4B(m).)

[Sections 505.107-505.150 reserved for expansion]

SUBCHAPTER D. AUTHORIZED PROJECTS

Sec. 505.151. AUTHORIZED PROJECTS. In this chapter, "project" means land, buildings, equipment, facilities, expenditures, and improvements included in the definition of "project" under Chapter 501, including:

(1) job training as provided by Section 501.162; and

(2) recycling facilities. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR COMMUNITY FACILITIES. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING. For purposes of this chapter, "project" includes land, buildings,

equipment, facilities, and improvements found by the board of directors to be required or suitable for the promotion of development and expansion of affordable housing, as described by 42 U.S.C. Section 12745. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

Sec. 505.154. PROJECTS RELATED TO WATER SUPPLY FACILITIES AND WATER CONSERVATION PROGRAMS. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for:

(1) the development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or

(2) the development and institution of water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

Sec. 505.155. PROJECTS RELATED TO BUSINESS ENTERPRISES THAT CREATE OR RETAIN PRIMARY JOBS. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to promote or develop new or expanded business enterprises that create or retain primary jobs, including:

(1) a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of

existing structures, general municipally owned improvements, and any improvements or facilities related to a project described by this subdivision; and

(2) any other project that the board of directors in the board's discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

Sec. 505.156. PROJECTS RELATED TO BUSINESS ENTERPRISES IN CERTAIN MUNICIPALITIES. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development, retention, or expansion of business enterprises if the project is undertaken by a Type B corporation authorized to be created by a municipality:

(1) that has not for each of the preceding two fiscal years received more than $50,000 in revenues from sales and use taxes imposed under this chapter; and

(2) the governing body of which has authorized the project by adopting a resolution only after giving the resolution at least two separate readings conducted at least one week apart. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

Sec. 505.157. PROJECTS RELATED TO BUSINESS ENTERPRISES IN LANDLOCKED COMMUNITIES. (a) In this section, "landlocked community" means a municipality that:

(1) is wholly or partly located in a county with a population of two million or more; and

(2) has within its municipal limits and

extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the municipality's zoning laws or land use restrictions.

(b) For a landlocked community that authorizes or has authorized the creation of a Type B corporation, "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises in the landlocked community. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(4).)

Sec. 505.158. PROJECTS RELATED TO BUSINESS DEVELOPMENT IN CERTAIN SMALL MUNICIPALITIES. (a) For a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, "project" also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development.

(b) A Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than $10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(3).)

Sec. 505.159. HEARING REQUIRED TO UNDERTAKE PROJECT. A Type B corporation shall hold at least one public hearing on a proposed project before spending money to undertake the project. (V.A.C.S. Art. 5190.6, Sec. 4B(n).)

Sec. 505.160. ELECTION REQUIRED FOR PROJECT; PETITION. (a) A Type B corporation may undertake a project under this chapter unless, not later than the 60th day after the date notice of the specific project or general type of project is first published, the governing body of the authorizing municipality receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the specific project or general type of project is undertaken.

(b) The governing body of the authorizing municipality is not required to hold an election after the submission of a petition under Subsection (a) if the voters of the municipality have previously approved the undertaking of the specific project or general type of project:

(1) at an election ordered for that purpose by the governing body of the municipality; or

(2) in conjunction with another election required under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4B(a-1).)

Sec. 505.161. PUBLIC PURPOSE DESIGNATION; EXEMPTION FROM TAXATION. (a) The legislature finds for all constitutional and statutory purposes that:

(1) a project of the type added to the definition of "project" by this subchapter is owned, used, and held for a public purpose for and on behalf of the municipality that authorized the creation of the Type B corporation; and

(2) except as otherwise provided by this section, Section 501.160 of this subtitle and Section 25.07(a), Tax Code, do not apply to a leasehold or other possessory interest granted by a

Type B corporation during the period the corporation owns projects on behalf of the authorizing municipality.

(b) A project is exempt from ad valorem taxation under Section 11.11, Tax Code, for the period described by Subsection (a)(2) of this section.

(c) This subsection applies only if the voters of the authorizing municipality of a Type B corporation have not approved the adoption of a sales and use tax for the benefit of the corporation under Section 505.251. An ownership, leasehold, or other possessory interest of a person other than the corporation in real property constituting a project of the corporation described by this section:

(1) is subject to ad valorem taxation under Section 25.07(a), Tax Code; or

(2) if the interest was created under an agreement entered into by the corporation before September 1, 1999, is covered by the provisions of the law codified by this section that govern ad valorem taxation of the ownership, leasehold, or other possessory interest that were in effect on the date the agreement was executed. (V.A.C.S. Art. 5190.6, Sec. 4B(k).)

[Sections 505.162-505.200 reserved for expansion]

SUBCHAPTER E. SPORTS VENUE PROJECTS AND RELATED INFRASTRUCTURE

Sec. 505.201. DEFINITIONS. In this subchapter:

(1) "Related infrastructure" has the meaning assigned by Section 334.001.

(2) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility that is primarily used or is

planned for primary use for one or more professional or amateur sports or athletics events and for which a fee is charged or is planned to be charged for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events. The term does not include an arena, coliseum, stadium, or other type of area or facility that is or will be owned and operated by a state-supported institution of higher education. (V.A.C.S. Art. 5190.6, Sec. 4B(a-4).)

Sec. 505.202. ELECTION: USE OF TAX PROCEEDS FOR SPORTS VENUE PROJECTS. (a) An authorizing municipality may submit to the voters of the municipality a ballot proposition that authorizes the Type B corporation to use the sales and use tax, including any amount previously authorized and collected, for a specific sports venue project, including related infrastructure, or for a specific category of sports venue projects, including related infrastructure.

(b) The project or category of projects described by Subsection (a) must be clearly described on the ballot so that a voter is able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales and use tax, the ballot language must clearly state that fact.

(c) The authorizing municipality may submit the ballot proposition at:

(1) an election held under another provision of this subtitle, including the election at which the proposition to

initially approve the adoption of a sales and use tax for the benefit of the Type B corporation is submitted; or

(2) a separate election to be held on a uniform election date. (V.A.C.S. Art. 5190.6, Secs. 4B(a-3)(1) (part), (2).)

Sec. 505.203. PUBLIC HEARING PRECEDING ELECTION. Before an election may be held under Section 505.202, a public hearing must be held in the authorizing municipality to inform the municipality's residents of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, notice of the date, time, place, and subject of the hearing must be published each week until the date of the hearing in a newspaper with general circulation in the municipality in which the project is located. (V.A.C.S. Art. 5190.6, Sec. 4B(a-3)(3).)

Sec. 505.204. LIMITATION ON SUBSEQUENT ELECTION. If a majority of the voters voting on the issue do not approve a specific sports venue project or a specific category of sports venue projects at an election under Section 505.202, another election concerning the same project or category of projects may not be held before the first anniversary of the date of the most recent election disapproving the project or category of projects. (V.A.C.S. Art. 5190.6, Sec. 4B(a-3)(4).)

Sec. 505.205. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS. Prior approval of a specific sports venue project at an election or completion of a specific sports venue project approved at an election does not prevent an authorizing municipality from seeking voter approval of an additional project or category of projects

under this subchapter to be funded from the same sales and use tax that is used to fund the previously approved sports venue project. (V.A.C.S. Art. 5190.6, Secs. 4B(a-3)(1) (part).)

Sec. 505.206. EFFECT OF SUBCHAPTER ON ELECTION AUTHORITY. This subchapter does not affect an authorizing municipality's authority to call an election under this chapter to impose a sales and use tax for any purpose authorized by this chapter after the sales and use tax described by this subchapter is, in accordance with Section 505.258, no longer collected. (V.A.C.S. Art. 5190.6, Sec. 4B(a-3)(1) (part).)

[Sections 505.207-505.250 reserved for expansion]

SUBCHAPTER F. SALES AND USE TAX

Sec. 505.251. TAX AUTHORIZED. The governing body of the authorizing municipality by ordinance may adopt a sales and use tax for the benefit of a Type B corporation if the tax is approved by a majority of the voters of the municipality voting at an election held for that purpose in accordance with Chapter 321, Tax Code. (V.A.C.S. Art. 5190.6, Sec. 4B(d) (part).)

Sec. 505.252. SALES TAX. (a) If the authorizing municipality adopts the tax under Section 505.251, a tax is imposed on the receipts from the sale at retail of taxable items within the municipality at the rate approved at the election.

(b) The rate of a tax adopted under this chapter must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent. (V.A.C.S. Art. 5190.6, Sec. 4B(e) (part).)

Sec. 505.253. USE TAX. (a) If the authorizing municipality adopts the tax under Section 505.251, an excise tax is imposed on

the use, storage, or other consumption within the municipality of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective within the municipality.

(b) The rate of the excise tax is the same as the rate of the sales tax portion of the sales and use tax and is applied to the sale price of the tangible personal property. (V.A.C.S. Art. 5190.6, Sec. 4B(e) (part).)

Sec. 505.254. SPECIFICATION OF TAX RATE ON BALLOT. In an election held to adopt the sales and use tax under this chapter, the ballot proposition must specify the rate of the tax to be adopted. (V.A.C.S. Art. 5190.6, Sec. 4B(e) (part).)

Sec. 505.255. ADOPTION OF TAX AT ELECTION TO REDUCE OR ABOLISH TAX FOR TYPE A CORPORATION. A municipality that holds an election to reduce the rate of or abolish a tax imposed under Chapter 504 may in the same proposition or in a separate proposition on the same ballot adopt a tax under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4B(e) (part).)

Sec. 505.256. APPLICABILITY OF TAX CODE. (a) Chapter 321, Tax Code, governs the imposition, computation, administration, collection, and remittance of the sales and use tax, except as inconsistent with this chapter.

(b) Except as provided by this subsection, the tax imposed under this chapter takes effect as provided by Section 321.102(a), Tax Code. If an election is held under this chapter at the same time an election is held to impose or change the rate of the additional municipal sales and use tax, the tax under this chapter and the

imposition or change in rate of the additional municipal sales and use tax take effect as provided by Section 321.102(b), Tax Code.

(c) After the effective date of the taxes imposed under this chapter, the adoption of a sales and use tax or the attempted adoption of a sales and use tax by the authorizing municipality or another taxing jurisdiction having territory in the municipality does not impair the taxes imposed under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4B(f).)

Sec. 505.257. REDUCTION OF TAX WITHIN REGIONAL TRANSPORTATION AUTHORITY. Notwithstanding any other provision of this chapter, a tax imposed under this chapter by an authorizing municipality that is located within the territorial limits of a regional transportation authority and that has been added to the territory of the authority under Section 452.6025, Transportation Code, is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code. (V.A.C.S. Art. 5190.6, Sec. 4B(n-1).)

Sec. 505.258. CESSATION OF COLLECTION OF TAXES. A sales and use tax imposed under this chapter may not be collected after the last day of the first calendar quarter that occurs after the Type B corporation notifies the comptroller that:

(1) all bonds or other obligations of the corporation, including any refunding bonds, payable wholly or partly from the proceeds of the sales and use tax imposed under this chapter, have been paid in full; or

(2) the total amount, exclusive of guaranteed interest, necessary to pay in full the bonds and other obligations

has been set aside in a trust account dedicated to the payment of the bonds and other obligations. (V.A.C.S. Art. 5190.6, Sec. 4B(i).)

Sec. 505.259. ELECTION REQUIREMENT FOR CERTAIN MUNICIPALITIES. The election requirement under Section 505.251 is satisfied and another election is not required if the voters of the authorizing municipality approved the imposition of an additional one-half cent sales and use tax at an election held before March 28, 1991, under an ordinance calling the election that:

(1) was published in a newspaper of general circulation in the municipality at least 14 days before the date of the election; and

(2) expressly stated that the election was being held in anticipation of the enactment of enabling and implementing legislation without further elections. (V.A.C.S. Art. 5190.6, Sec. 4B(d) (part).)

[Sections 505.260-505.300 reserved for expansion]

SUBCHAPTER G. USE OF TAX PROCEEDS

Sec. 505.301. DELIVERY OF TAX PROCEEDS. On the authorizing municipality's receipt from the comptroller of the proceeds of the sales and use tax imposed under this chapter, the authorizing municipality shall deliver the proceeds to the Type B corporation. (V.A.C.S. Art. 5190.6, Sec. 4B(g) (part).)

Sec. 505.302. PAYMENT OF PROJECT COSTS, BONDS, OR OTHER OBLIGATIONS. The proceeds of the sales and use tax imposed under this chapter may be used to:

(1) pay the costs of projects of the types added to the

definition of "project" by Subchapter D; or

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the Type B corporation to:

(A) pay the costs of the projects; or

(B) refund bonds or other obligations issued to pay the costs of projects. (V.A.C.S. Art. 5190.6, Sec. 4B(g) (part).)

Sec. 505.303. PAYMENT OF MAINTENANCE AND OPERATING COSTS; ELECTION. (a) The costs of a publicly owned and operated project purchased or constructed under this chapter include the maintenance and operating costs of the project.

(b) The proceeds of taxes may be used to pay the maintenance and operating costs of a project, unless not later than the 60th day after the date notice of the specific use of the tax proceeds is first published, the governing body of the authorizing municipality of the Type B corporation undertaking the project receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the tax proceeds may be used to pay the maintenance and operating costs of a project.

(c) The governing body of the authorizing municipality is not required to hold an election after the submission of a petition under Subsection (b) if the voters of the municipality have previously approved at an election ordered for that purpose by the governing body or in conjunction with another election required under this chapter that:

(1) the costs of a publicly owned and operated project purchased or constructed under this chapter include the maintenance and operating costs of the project; and

(2) the tax proceeds may be used to pay the maintenance and operating costs of a project.

(d) An authorizing municipality is not required to hold an election under this section if the municipality:

(1) is located in a county with a population of more than 1.3 million; and

(2) has held before February 1, 1993, an election under this chapter at which the additional sales tax was approved. (V.A.C.S. Art. 5190.6, Sec. 4B(a-2).)

Sec. 505.304. PAYMENT FOR CERTAIN WATER-RELATED PROJECTS: ELECTION REQUIRED. (a) A Type B corporation may not use proceeds from the sales and use tax to undertake a project described by Section 505.154 unless the use of tax proceeds for that purpose is authorized by a majority of the voters voting at an election held in the municipality for that purpose.

(b) The ballot in an election held under this section shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate)."

(c) An election held under this section may be authorized by the governing body of an authorizing municipality subsequent to an earlier election authorized under Section 505.251. (V.A.C.S. Art. 5190.6, Sec. 4B(a-5).)

Sec. 505.305. PAYMENT FOR CLEANUP OF CONTAMINATED PROPERTY; ELECTION. (a) The economic development office, with the assistance of the Texas Commission on Environmental Quality, may encourage a Type B corporation to use proceeds from the sales and use tax imposed under this chapter for the cleanup of contaminated property.

(b) Notwithstanding any other provision of this chapter, a Type B corporation may use proceeds from the sales and use tax for the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the voters voting at an election held in the authorizing municipality for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property." (V.A.C.S. Art. 5190.6, Sec. 4B(p).)

[Sections 505.306-505.350 reserved for expansion]

SUBCHAPTER H. TERMINATION OF CORPORATION

Sec. 505.351. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a Type B corporation created on or after September 1, 1999. (Acts 76th Leg., R.S., Ch. 21, Sec. 2 (part).)

Sec. 505.352. ELECTION TO TERMINATE EXISTENCE OF CORPORATION ON PETITION. (a) The governing body of an authorizing municipality shall order an election on the termination of the existence of the Type B corporation on receipt of a petition requesting the election that is signed by at least 10 percent of the registered voters of the municipality.

(b) The authorizing municipality shall hold the election on

the first available uniform election date that occurs after the time required by Section 3.005, Election Code. (V.A.C.S. Art. 5190.6, Sec. 4B(o)(1).)

Sec. 505.353. BALLOT. The ballot for an election held under Section 505.352 shall be printed to permit voting for or against the proposition: "Termination of the _____ (name of corporation)." (V.A.C.S. Art. 5190.6, Sec. 4B(o)(2).)

Sec. 505.354. TERMINATION OF EXISTENCE OF CORPORATION. (a) If a majority of the votes cast at an election held under Section 505.352 approve the termination, the Type B corporation shall:

(1) continue operations only as necessary to meet the obligations the corporation incurred before the date of the election, including paying the principal of and interest on the corporation's bonds; and

(2) liquidate the corporation's assets and apply the proceeds to satisfy the corporation's obligations, to the extent practicable.

(b) After the Type B corporation has satisfied all of the corporation's obligations, any remaining assets of the corporation shall be transferred to the authorizing municipality, and the existence of the corporation is terminated.

(c) The authorizing municipality shall promptly notify the comptroller and the secretary of state of the date the existence of a Type B corporation is terminated under this subchapter.

(d) A tax imposed under this chapter may not be collected after the last day of the first calendar quarter that begins after the authorizing municipality provides notice under Subsection (c).

(V.A.C.S. Art. 5190.6, Secs. 4B(o)(3), (4).)

Sec. 505.355. ELECTION REJECTING TERMINATION. If less than a majority of the votes cast at an election held under Section 505.352 approve the termination, Section 505.354 has no effect. (V.A.C.S. Art. 5190.6, Sec. 4B(o)(5).)

CHAPTER 506. COUNTY ALLIANCE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. DEFINITION

Sec. 506.002. CREATION OF COUNTY ALLIANCE; AUTHORITY TO CREATE CORPORATION

Sec. 506.003. STATUS OF COUNTY ALLIANCE AS SINGLE UNIT

Sec. 506.004. APPLICABILITY OF SUBTITLE

[Sections 506.005-506.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 506.051. APPOINTMENT OF DIRECTORS; TERM

Sec. 506.052. NO COMPENSATION; REIMBURSEMENT FOR EXPENSES

Sec. 506.053. REMOVAL OF DIRECTOR

[Sections 506.054-506.100 reserved for expansion]

SUBCHAPTER C. MEMBERSHIP IN COUNTY ALLIANCE

Sec. 506.101. MEMBERSHIP IN ESTABLISHED COUNTY ALLIANCE

Sec. 506.102. WITHDRAWAL FROM COUNTY ALLIANCE

[Sections 506.103-506.150 reserved for expansion]

SUBCHAPTER D. FINANCIAL PROVISIONS

Sec. 506.151. DISTRIBUTION OF NET EARNINGS

[Sections 506.152-506.200 reserved for expansion]

SUBCHAPTER E. TERMINATION OF CORPORATION

Sec. 506.201. EFFECT OF WITHDRAWAL OF COUNTY

Sec. 506.202. DISTRIBUTION OF ASSETS

CHAPTER 506. COUNTY ALLIANCE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. DEFINITION. In this chapter, "county alliance corporation" means the corporation authorized to be created by a county alliance. (New.)

Sec. 506.002. CREATION OF COUNTY ALLIANCE; AUTHORITY TO CREATE CORPORATION. Two or more counties that are adjacent or in close proximity, as determined by the commissioners courts of the counties involved, may establish a county alliance to authorize the creation of a corporation. (V.A.C.S. Art. 5190.6, Sec. 4D(a) (part), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 506.003. STATUS OF COUNTY ALLIANCE AS SINGLE UNIT. For purposes of this subtitle, a county alliance is considered a single unit. (V.A.C.S. Art. 5190.6, Sec. 4D(a) (part), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 506.004. APPLICABILITY OF SUBTITLE. The provisions of this subtitle outside of this chapter apply to a county alliance and to a county alliance corporation, except to the extent inconsistent with this chapter or another provision of this subtitle that expressly applies to a county alliance or to a county alliance corporation. (V.A.C.S. Art. 5190.6, Sec. 4D(a) (part), as added Acts 76th Leg., R.S., Ch. 973.)

[Sections 506.005-506.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 506.051. APPOINTMENT OF DIRECTORS; TERM. (a) The board of directors of a county alliance corporation consists of directors appointed by the commissioners court of each county in the alliance as follows:

(1) three directors from each county if the alliance includes 10 or fewer counties; or

(2) two directors from each county if the alliance includes more than 10 counties.

(b) A director may not serve more than six years. (V.A.C.S. Art. 5190.6, Sec. 4D(b) (part), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 506.052. NO COMPENSATION; REIMBURSEMENT FOR EXPENSES. A director serves without compensation but is entitled to reimbursement for expenses incurred in the performance of the director's duties. (V.A.C.S. Art. 5190.6, Sec. 4D(b) (part), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 506.053. REMOVAL OF DIRECTOR. A director is subject to removal at the will of the appointing county. (V.A.C.S. Art. 5190.6, Sec. 4D(b) (part), as added Acts 76th Leg., R.S., Ch. 973.)

[Sections 506.054-506.100 reserved for expansion]

SUBCHAPTER C. MEMBERSHIP IN COUNTY ALLIANCE

Sec. 506.101. MEMBERSHIP IN ESTABLISHED COUNTY ALLIANCE. A county may become a member of an established county alliance that has authorized the creation of a county alliance corporation. The county becomes a member of the county alliance if:

(1) the commissioners court of the county proposing to

join the county alliance petitions the board of directors of the established county alliance corporation for admission;

(2) the board approves the admission of the petitioning county; and

(3) the petitioning county:

(A) agrees to abide by the bylaws of the county alliance corporation;

(B) pays a fee to the county alliance as determined by the board; and

(C) meets any other requirement established by the board. (V.A.C.S. Art. 5190.6, Sec. 4D(c), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 506.102. WITHDRAWAL FROM COUNTY ALLIANCE. (a) A county may withdraw from a county alliance if all of the county's obligations and entitlements relating to the county alliance corporation have been properly settled.

(b) The county withdrawing from the county alliance may not receive any assets, including money or other property, of the county alliance corporation until the existence of the corporation is terminated as provided by Section 506.202. (V.A.C.S. Art. 5190.6, Sec. 4D(e) (part), as added Acts 76th Leg., R.S., Ch. 973.)

[Sections 506.103-506.150 reserved for expansion]

SUBCHAPTER D. FINANCIAL PROVISIONS

Sec. 506.151. DISTRIBUTION OF NET EARNINGS. If the board of directors of a county alliance corporation determines that sufficient provisions have been made to pay the corporation's expenses, bonds, and other obligations, any net earnings may be

distributed among the counties in the county alliance as a percentage of the per capita contributions made by each of the counties during the corporation's existence. (V.A.C.S. Art. 5190.6, Sec. 4D(d), as added Acts 76th Leg., R.S., Ch. 973.)

[Sections 506.152-506.200 reserved for expansion]

SUBCHAPTER E. TERMINATION OF CORPORATION

Sec. 506.201. EFFECT OF WITHDRAWAL OF COUNTY. A county alliance corporation is not required to terminate its existence as a result of the withdrawal of a county from the county alliance if at least two counties remain in the county alliance. (V.A.C.S. Art. 5190.6, Sec. 4D(g), as added Acts 76th Leg., R.S., Ch. 973.)

Sec. 506.202. DISTRIBUTION OF ASSETS. (a) Subject to Subsection (b), on termination of the existence of a county alliance corporation, any assets of the corporation remaining after all the corporation's obligations have been met shall be distributed among the counties in the county alliance as a percentage of the per capita contributions made by each of the counties during the corporation's existence.

(b) A county that withdraws from a county alliance is entitled to receive a distribution under Subsection (a) that is reduced by one percent for each year the corporation operated without the county's membership in the alliance. (V.A.C.S. Art. 5190.6, Secs. 4D(e) (part), (f), as added Acts 76th Leg., R.S., Ch. 973.)

CHAPTER 507. SPACEPORT DEVELOPMENT CORPORATIONS

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CHAPTER 507. SPACEPORT DEVELOPMENT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 507.001. DEFINITIONS. In this chapter:

(1) "Authorizing entity" means the political subdivision or combination of political subdivisions that authorizes the creation of a spaceport development corporation as permitted under Section 507.003.

(2) "Spacecraft" includes a satellite.

(3) "Spaceport" includes:

(A) an area intended to be used to launch or land a spacecraft;

(B) a spaceport building or facility located on an area appurtenant to a launching or landing area;

(C) an area appurtenant to a launching or landing area that is intended for use for a spaceport building or facility; and

(D) a right-of-way related to a launching or landing area, building, facility, or other area that is appurtenant to a launching or landing area.

(4) "Spaceport development corporation" means a corporation governed by this chapter. (V.A.C.S. Art. 5190.6, Secs. 4D(a)(3), (4), as added Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(a)(3), (4); New.)

Sec. 507.002. SCOPE OF PROJECT. For purposes of a spaceport development corporation, in addition to land, buildings, equipment, facilities, and improvements that constitute a project under Chapter 501, "project" includes the land, buildings, equipment, facilities, and improvements found by the board of directors of the corporation to:

(1) be required or suitable for use for the promotion or development of a spaceport, related area transportation facilities, automobile parking facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance the spaceport or another item specified by this subdivision;

(2) promote or develop new or expanded business enterprises relating to a spaceport;

(3) promote or develop educational programs or job training relating to a spaceport; or

(4) be required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745, relating to a spaceport. (V.A.C.S. Art. 5190.6, Sec. 4D(a)(2), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(a)(2).)

Sec. 507.003. AUTHORITY TO CREATE CORPORATION BY ELIGIBLE ENTITIES. The following entities are eligible to authorize the

creation under this subtitle of a spaceport development corporation:

(1) a county; or

(2) a combination of one or more municipalities and one or more counties. (V.A.C.S. Art. 5190.6, Secs. 4D(a)(1), (c) (part), as added Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(a)(1), (b) (part).)

Sec. 507.004. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a spaceport development corporation:

(1) must state that the corporation is governed by this chapter; and

(2) may include in the corporation's name any word or phrase the authorizing entity specifies. (V.A.C.S. Art. 5190.6, Sec. 4D(c) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(b) (part).)

Sec. 507.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS. Sections 501.203, 501.205, 501.251-254, 501.255(a) and (b), 501.256, and 501.257 do not apply to a corporation under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4D(n), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(l).)

Sec. 507.006. CONFLICTS OF LAW. To the extent of any conflict between this chapter and any other provision of this subtitle, this chapter prevails. (V.A.C.S. Art. 5190.6, Sec. 4D(b), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(b) (part).)

[Sections 507.007-507.050 reserved for expansion]

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 507.051. BOARD OF DIRECTORS. (a) A spaceport

development corporation is governed by a board of seven directors.

(b) If a single county authorizes the creation of a spaceport development corporation, the commissioners court of the county shall appoint the directors of the corporation. If more than one political subdivision authorizes the creation of a spaceport development corporation, the governing bodies of the political subdivisions shall appoint the directors through written agreement between the governing bodies.

(c) Each director serves a two-year term that expires June 1 of each odd-numbered year, except that three or four of the initial directors may serve a one-year term so that the terms may be staggered in the future. (V.A.C.S. Art. 5190.6, Sec. 4D(d) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(g) (part).)

Sec. 507.052. OFFICERS. (a) The board of directors of a spaceport development corporation shall elect a presiding officer from among its members.

(b) The board of directors by rule may provide for the election of other officers. (V.A.C.S. Art. 5190.6, Sec. 4D(d) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(g) (part).)

Sec. 507.053. MEETINGS. The board of directors of a spaceport development corporation shall meet:

(1) at least once every three months; and

(2) at the call of the presiding officer or a majority of the directors. (V.A.C.S. Art. 5190.6, Sec. 4D(d) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(g) (part).)

[Sections 507.054-507.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 507.101. GENERAL POWERS AND LIMITATIONS OF CORPORATION. A spaceport development corporation:

(1) has the powers granted by this chapter and by other chapters of this subtitle; and

(2) is subject to the limitations of a corporation authorized to be created under another provision of this subtitle. (V.A.C.S. Art. 5190.6, Sec. 4D(c) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(b) (part).)

Sec. 507.102. ACQUISITION, MORTGAGE, OR DISPOSAL OF PROPERTY. (a) A spaceport development corporation may acquire property but only if a site in the territory of the authorizing entity has been designated as the site for a spaceport.

(b) A spaceport development corporation may:

(1) mortgage property; or

(2) convey or otherwise dispose of property. (V.A.C.S. Art. 5190.6, Secs. 4D(e) (part), (f) (part), as added Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(c) (part), (d) (part).)

Sec. 507.103. EMINENT DOMAIN. (a) A spaceport development corporation may exercise the power of eminent domain to acquire property for a spaceport, including the power to:

(1) acquire fee title in land condemned;

(2) relocate or modify a railroad, utility line, pipeline, or other facility that may interfere with a spaceport; or

(3) impose a reasonable restriction on using the surface of the property for mineral development if the corporation does not own the mineral rights.

(b) Before exercising the power of eminent domain under this chapter, a spaceport development corporation must obtain a resolution approving the proposed condemnation from the governing body of a county or municipality in which the property is located. For purposes of this chapter, territory in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

(c) Chapter 21, Property Code, governs the exercise of the power of eminent domain by a spaceport development corporation. (V.A.C.S. Art. 5190.6, Secs. 4D(e) (part), (g), as added Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(c) (part), (e).)

Sec. 507.104. CONTRACTS. (a) Except as provided by Subsection (b), a spaceport development corporation may enter into:

(1) an agreement with any person; or

(2) an interlocal contract under Chapter 791, Government Code.

(b) A spaceport development corporation may not enter into a contract to operate a spaceport unless the agreement provides that the person contracting with the corporation assumes the corporation's liability for a cause of action arising from environmental damage. (V.A.C.S. Art. 5190.6, Sec. 4D(h) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(f) (part).)

Sec. 507.105. GENERAL POWERS RELATED TO FINANCES. A spaceport development corporation may:

(1) impose a charge for using a spaceport or a service the corporation provides;

(2) borrow money;

(3) loan money to fund a spaceport; and

(4) invest money under the corporation's control in an investment authorized by Chapter 2256, Government Code. (V.A.C.S. Art. 5190.6, Sec. 4D(k) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(i) (part).)

Sec. 507.106. DONATIONS, GRANTS, AND LOANS. A spaceport development corporation may accept a donation, grant, or loan from any person. (V.A.C.S. Art. 5190.6, Sec. 4D(h) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(f) (part).)

Sec. 507.107. AUTHORITY TO SUE AND BE SUED. A spaceport development corporation may sue and be sued. (V.A.C.S. Art. 5190.6, Sec. 4D(i), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(f) (part).)

Sec. 507.108. HIGHER EDUCATION COURSES AND DEGREE PROGRAMS. (a) The board of directors of a spaceport development corporation by rule may develop a plan for higher education courses and degree programs to be offered at or near a spaceport.

(b) A course or degree program offered under this section must be related to the purposes of this chapter.

(c) The aerospace and aviation office of the Texas Economic Development and Tourism Office and the Texas Higher Education Coordinating Board shall cooperate with and advise the board of directors in carrying out this section. (V.A.C.S. Art. 5190.6, Sec. 4D(j), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(h).)

[Sections 507.109-507.150 reserved for expansion]

SUBCHAPTER D. BONDS

Sec. 507.151. AUTHORITY TO ISSUE BONDS; APPROVAL. (a) A

spaceport development corporation may issue bonds only if a site in the territory of the authorizing entity has been designated as the site for a spaceport.

(b) Bonds issued under this chapter must be approved by the governing body of each political subdivision that authorized creation of the spaceport development corporation. (V.A.C.S. Art. 5190.6, Secs. 4D(f) (part), (k) (part), (m) (part), as added Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(d) (part), (i) (part), (k) (part).)

Sec. 507.152. BONDS NOT OBLIGATION OF CERTAIN ENTITIES. Bonds issued by a spaceport development corporation are not an obligation or a pledge of the faith and credit of this state, a political subdivision that authorized the creation of the corporation, or another political subdivision or agency of this state. (V.A.C.S. Art. 5190.6, Sec. 4D(m) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(k) (part).)

Sec. 507.153. BOND REQUIREMENTS. Bonds issued under this chapter must:

(1) be payable only from the revenue of a spaceport developed by the spaceport development corporation issuing the bonds;

(2) mature not later than 50 years after the date of issuance; and

(3) state on their faces that the bonds are not an obligation of the State of Texas or a political subdivision of this state, other than the corporation that issued the bonds. (V.A.C.S. Art. 5190.6, Sec. 4D(m) (part), as added Acts 76th Leg., R.S., Ch.

1537, Sec. 4E(k) (part).)

[Sections 507.154-507.200 reserved for expansion]

SUBCHAPTER E. TAXES

Sec. 507.201. EXEMPTION FROM CERTAIN TAXES. (a) The property, income, and operations of a spaceport development corporation are exempt from taxes imposed by this state or a political subdivision of this state.

(b) Tangible personal property located in the spaceport, such as a spacecraft or other property necessary to launch the spacecraft, is exempt from ad valorem taxation.

(c) Chapter 151, Tax Code, does not apply to tangible personal property purchased by a person for use in a spaceport. (V.A.C.S. Art. 5190.6, Sec. 4D(l) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(j) (part).)

Sec. 507.202. PAYMENT IN LIEU OF AD VALOREM TAXES. In lieu of taxes, a spaceport development corporation shall pay to each political subdivision of this state in which land owned by the corporation is located an amount equal to the amount of ad valorem taxes that would be imposed on that land if the land were privately owned. (V.A.C.S. Art. 5190.6, Sec. 4D(l) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(j) (part).)

SECTION 3.02. CONFORMING AMENDMENT. Section 403.030(a), Government Code, is amended to read as follows:

(a) For purposes of evaluating the effect on economic development in this state, the comptroller, before each regular session of the legislature, shall collect and make available information that:

(1) lists the strategies in the General Appropriations Act identified as meeting the statewide priority goal or service category of economic development, if any, of each state agency and institution of higher education, as defined by Section 61.003, Education Code, including:

(A) legislative appropriations or actual expenditures, as applicable, for each strategy;

(B) the method of financing of each strategy; and

(C) outcome measures associated with each appropriate strategy that are listed in the General Appropriations Act or the Automated Budget and Evaluation System of Texas (ABEST);

(2) lists all investments financed with money from the Texas growth fund created by Section 70, Article XVI, Texas Constitution;

(3) contains a summary of the information reported under Subchapter D, Chapter 502, Local Government Code [~~Section 4C, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], by each corporation created under Chapter 504 [~~Section 4A~~] or 505, Local Government Code, [~~4B of that Act~~] and a copy of the report submitted by each of the 10 corporations with the largest total revenue in the most recent fiscal year ending before the date the information compiled under this section is made available;

(4) contains a summary of the report required by Section 403.014 and information on the effect on revenues of allocation or apportionment under Sections 171.106 and 171.1061, Tax Code;

(5) contains a summary of reports the comptroller is required to submit by other law to evaluate the effectiveness of Tax Code provisions, including reports required by Sections 171.707, 171.727, 171.759, and 171.809, Tax Code; and

(6) to the extent practicable, contains information on employment, capital investment, and personal income relating to:

(A) at least two tax provisions described by Section 403.014; and

(B) changes in school district property tax law or Tax Code provisions enacted by the most recent legislature.

SECTION 3.03. CONFORMING AMENDMENT. Section 481.0069(a)(2), Government Code, is amended to read as follows:

(2) "Spaceport" has the meaning assigned by Section 507.001, Local Government Code [~~4D(a), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as added by Chapter 1537, Acts of the 76th Legislature, Regular Session, 1999~~].

SECTION 3.04. CONFORMING AMENDMENT. Section 481.0069(d), Government Code, is amended to read as follows:

(d) Money in the spaceport trust fund may not be spent unless the office certifies to the comptroller that:

(1) a viable business entity has been established that:

(A) has a business plan that demonstrates that the entity has available the financial, managerial, and technical expertise and capability necessary to launch and land a reusable launch vehicle; and

(B) has committed to locating its facilities at a spaceport in this state;

(2) a development corporation for spaceport facilities created under Chapter 507, Local Government Code [~~Section 4D, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as added by Chapter 1537, Acts of the 76th Legislature, Regular Session, 1999~~], has established a development plan for the spaceport project and has secured at least 90 percent of the funding required for the project; and

(3) the spaceport or launch operator has obtained the appropriate Federal Aviation Administration license.

SECTION 3.05. CONFORMING AMENDMENT. Section 481.023(a), Government Code, is amended to read as follows:

(a) The office shall perform the administrative duties prescribed under:

(1) Chapter 1433; and

(2) the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.06. CONFORMING AMENDMENT. Section 481.072, Government Code, is amended to read as follows:

Sec. 481.072. DEFINITIONS. In this subchapter:

(1) "Cost" has the meaning assigned that term by Subtitle C1, Title 12, Local Government Code [~~the Development Corporation Act~~].

(2) [~~"Development Corporation Act" means the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~

~~Civil Statutes).~~

[~~(3)~~] "Project" has the meaning assigned that term by Subtitle C1, Title 12, Local Government Code [~~the Development Corporation Act~~].

(3) [~~(4)~~] "User" includes any person.

SECTION 3.07. CONFORMING AMENDMENT. Section 481.502(a), Government Code, is amended to read as follows:

(a) The office, in coordination with the Texas Strategic Military Planning Commission, shall assist defense communities in obtaining financing for economic development projects that seek to address future realignment or closure of a defense base that is in, adjacent to, or near the defense community. The office and the commission shall refer the defense community to:

(1) a local economic development corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~] for possible financing; or

(2) an appropriate state agency that has an existing program to provide financing for the project, including:

(A) the Texas Water Development Board; or

(B) the Texas Department of Transportation.

SECTION 3.08. CONFORMING AMENDMENT. Section 489.106, Government Code, is amended to read as follows:

Sec. 489.106. ADMINISTRATION OF FUND AND CHAPTER. The office shall administer the fund. In administering the fund and this chapter, the office has the powers necessary to carry out the purposes of this chapter, including the power to:

(1) make, execute, and deliver contracts, conveyances, and other instruments;

(2) impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payments or performance; and

(3) issue bonds for economic development projects as that term is defined by Section 501.101, Local Government Code, [~~2(11)(A)~~] or Section 505.151, 505.152, 505.153, 505.154, 505.155, or 505.156, Local Government Code [~~4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.09. CONFORMING AMENDMENT. Section 489.108, Government Code, is amended to read as follows:

Sec. 489.108. PROGRAMS, SERVICES, AND FUNDS UNDER BANK'S DIRECTION. Notwithstanding any other law, the bank shall perform the duties and functions of the office with respect to the following programs, services, and funds:

(1) the Texas Small Business Industrial Development Corporation established under Chapter 503, Local Government Code [~~Section 4, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~];

(2) the capital access program established under Section 481.405;

(3) the Texas leverage fund;

(4) the linked deposit program established under Section 481.193;

(5) the enterprise zone program established under

Chapter 2303;

(6) the industrial revenue bond program;

(7) the defense economic readjustment zone program established under Chapter 2310;

(8) the Empowerment Zone and Enterprise Community grant program established under Section 481.025; and

(9) the renewal community program.

SECTION 3.10. CONFORMING AMENDMENT. Sections 551.056(b) and (c), Government Code, are amended to read as follows:

(b) In addition to the other place at which notice is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting on the Internet website of the governmental body or economic development corporation:

(1) a municipality;

(2) a county;

(3) a school district;

(4) the governing body of a junior college or junior college district, including a college or district that has changed its name in accordance with Chapter 130, Education Code; and

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

(c) The following governmental bodies and economic development corporations must also concurrently post the agenda for the meeting on the Internet website of the governmental body or

economic development corporation:

(1) a municipality with a population of 48,000 or more;

(2) a county with a population of 65,000 or more;

(3) a school district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;

(4) the governing body of a junior college district, including a district that has changed its name in accordance with Chapter 130, Education Code, that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more; and

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~] that was created by or for:

(A) a municipality with a population of 48,000 or more; or

(B) a county or district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more.

SECTION 3.11. CONFORMING AMENDMENT. Section 2301.091(c), Government Code, is amended to read as follows:

(c) To accomplish the purposes of this chapter, an authority has the powers granted to industrial development corporations by Sections 501.054, 501.059, 501.060, 501.064(a), 501.067, 501.074, 501.153(a), 501.154, 501.155, 501.159, 501.201(a), 501.210(b),

501.214, and 501.402, Local Government Code [~~Section 23~~], except the limitations provided by Section 501.064(c), Local Government Code [~~Subsection (a)(11) of that section~~], and Sections 501.153(b), 501.208(a), (c), and (e), 501.209, 501.210, and 501.213, Local Government Code [~~25(e), 26, 27, and 29, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], but is otherwise governed by this chapter.

SECTION 3.12. CONFORMING AMENDMENT. Section 2303.509, Government Code, is amended to read as follows:

Sec. 2303.509. DEVELOPMENT BONDS. To finance a project in an enterprise zone, bonds may be issued under:

(1) Chapter 1433; or

(2) the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.13. CONFORMING AMENDMENT. Sections 2303.510(a) and (b), Government Code, are amended to read as follows:

(a) The governing body of a municipality that is the governing body of an enterprise zone may create, in accordance with the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], an industrial development corporation for use by the enterprise zone.

(b) A corporation created under this section has the powers and is subject to the limitations of a corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979~~]. To the extent of a conflict between this

section and that subtitle [~~Act~~], that subtitle [~~Act~~] prevails.

SECTION 3.14. CONFORMING AMENDMENT. Section 2310.408, Government Code, is amended to read as follows:

Sec. 2310.408. DEVELOPMENT BONDS. To finance a project in a readjustment zone, bonds may be issued under:

(1) Chapter 1433; or

(2) the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.15. CONFORMING AMENDMENT. Section 362.017, Health and Safety Code, is amended to read as follows:

Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION. (a) A public agency that has entered into a contract under Section 362.014 may sponsor the creation of an industrial development corporation under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

(b) The corporation may issue bonds, notes, or other evidences of indebtedness under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979~~] to finance the cost of a system under the contract regardless of whether the system is located within the boundaries of the public agency.

SECTION 3.16. CONFORMING AMENDMENT. Section 363.118(a), Health and Safety Code, is amended to read as follows:

(a) A public agency that enters into a contract under Section 363.116 may sponsor the creation of an industrial development corporation as provided by the Development Corporation

Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.17. CONFORMING AMENDMENT. Section 253.009(a), Local Government Code, is amended to read as follows:

(a) A municipality may convey to a municipally created economic development corporation, including a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], real property that has been conveyed by gift to the municipality or conveyed to the municipality as part of a legal settlement and that is adjacent to an area designated for development by the corporation.

SECTION 3.18. CONFORMING AMENDMENT. Section 283.053(d), Local Government Code, is amended to read as follows:

(d) The base amount for a municipality that was involved in litigation relating to franchise fees with one or more certificated telecommunications providers during any part of 1998 and that, not later than December 1, 1999, repeals any ordinance subject to dispute in the litigation, voluntarily dismisses with prejudice any claims in the litigation for compensation, and agrees to waive any potential claim for compensation under any franchise agreement or ordinance expired or in existence on September 1, 1999, is equal to, at the municipality's election:

(1) an amount not to exceed the state average access line rate on a per category basis for the certificated telecommunications provider with the greatest number of access lines in that municipality multiplied by the total number of access

lines located within the boundaries of the municipality on December 31, 1998, including any newly annexed areas; or

(2) an amount not to exceed 21 percent of the total sales and use tax revenue received by the municipality pursuant to Chapter 321, Tax Code. The amount does not include sales and use taxes collected under:

(A) Chapter 451, 452, 453, or 454, Transportation Code, for a mass transit authority;

(B) Chapter 504 or 505 [~~the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), for a 4A or 4B Development Corporation~~];

(C) Chapters 334 and 335, Local Government Code; or

(D) Chapters 321, 322, and 323, Tax Code, for a special district, including health service, crime control, hospital, and emergency service districts.

SECTION 3.19. CONFORMING AMENDMENT. Section 334.003, Local Government Code, is amended to read as follows:

Sec. 334.003. APPLICATION TO VENUE CONSTRUCTED UNDER OTHER LAW. A county or municipality may use this chapter for a venue project relating to a venue and related infrastructure planned, acquired, established, developed, constructed, or renovated under other law, including Chapter 505 of this code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes),~~] or Subchapter E, Chapter 451, Transportation Code.

SECTION 3.20. CONFORMING AMENDMENT. Section 334.085(a),

Local Government Code, is amended to read as follows:

(a) In this section, "taxing authority" means:

(1) a rapid transit authority created under Chapter 451, Transportation Code;

(2) a regional transportation authority created under Chapter 452, Transportation Code;

(3) a crime control district created under the Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes); or

(4) a [~~an industrial development~~] corporation created under Chapter 504 or 505 [~~Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.21. CONFORMING AMENDMENT. Section 335.002, Local Government Code, is amended to read as follows:

Sec. 335.002. APPLICATION TO VENUE CONSTRUCTED UNDER OTHER LAW. A district may use this chapter for a venue project relating to a venue and related infrastructure planned, acquired, established, developed, constructed, or renovated under other law, including Chapter 505 of this code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes),~~] or Subchapter E, Chapter 451, Transportation Code.

SECTION 3.22. CONFORMING AMENDMENT. Section 375.303(2), Local Government Code, is amended to read as follows:

(2) "Eligible project" means a program authorized by Section 379A.051 and a project as defined by Section 501.002 [~~Sections 2(11)~~] and Sections 505.151-505.156 [~~4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~

~~Civil Statutes)~~]. Notwithstanding this definition, seeking a charter for or operating an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, shall not be an eligible project.

SECTION 3.23. CONFORMING AMENDMENT. Section 377.001(3), Local Government Code, is amended to read as follows:

(3) "Development project" means:

(A) a "project" as that term is defined by Sections 505.151-505.158 [~~Section 4B(a), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; or

(B) a convention center facility or related improvement such as a convention center, civic center, civic center building, civic center hotel, or auditorium, including parking areas or facilities that are used to park vehicles and that are located at or in the vicinity of other convention center facilities.

SECTION 3.24. CONFORMING AMENDMENT. Section 379B.002(b), Local Government Code, is amended to read as follows:

(b) When establishing an authority, the municipality may designate the authority in the municipality's resolution to be the successor in interest to a nonprofit corporation organized under the Development Corporation Act (Subtitle C1, Title 12) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]. On adoption of the resolution, the corporation is dissolved and the authority succeeds to all rights and liabilities of that corporation.

SECTION 3.25. CONFORMING AMENDMENT. Section 379B.011(b), Local Government Code, is amended to read as follows:

(b) Section 25.07(a), Tax Code, applies to a leasehold or other possessory interest in real property granted by an authority for a project designated under Section 379B.009(a) in the same manner as it applies to a leasehold or other possessory interest in real property constituting a project described by Section 505.161 [~~4B(k), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], except for the requirement in Section 505.161 [~~4B(k)~~] that the voters of the municipality that created the authority have authorized the levy of a sales and use tax for the benefit of the authority.

SECTION 3.26. CONFORMING AMENDMENT. Section 380.002(b), Local Government Code, is amended to read as follows:

(b) A home-rule municipality may, under a contract with a development corporation created by the municipality under the Development Corporation Act (Subtitle C1, Title 12) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], grant public money to the corporation. The development corporation shall use the grant money for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.

SECTION 3.27. CONFORMING AMENDMENT. Sections 383.004(4) and (8), Local Government Code, are amended to read as follows:

(4) "Cost" has the meaning assigned by Section 501.152 [~~2(4), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

(8) "Project" has the meaning assigned by Sections 505.151-505.156 [~~Section 4B(a)(2), Development Corporation Act of~~

~~1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.28. CONFORMING AMENDMENT. Section 383.112, Local Government Code, is amended to read as follows:

Sec. 383.112. EXEMPTION. Notwithstanding any other provision of this chapter to the contrary, any contract between the district and a governmental entity or nonprofit corporation created under the Development Corporation Act (Subtitle C1, Title 12) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~] is not subject to the competitive bidding requirements of this chapter.

SECTION 3.29. CONFORMING AMENDMENT. Section 387.002, Local Government Code, is amended to read as follows:

Sec. 387.002. APPLICABILITY. This chapter applies only to a county that has a population of less than 45,000 if:

(1) any portion of the county is included in an authority governed by Chapter 451 or 452, Transportation Code; or

(2) the county does not contain any part of a municipality that, before the commissioners court of the county calls an election on the question of creating a district under Section 387.003, has:

(A) created a development corporation under Chapter 504 or 505 [~~Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; or

(B) imposed a sales and use tax that when combined with any other sales and use tax applicable in the municipality, exceeds two percent.

SECTION 3.30. CONFORMING AMENDMENT. Section 3801.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3801.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code;

(3) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects, other than a domed football stadium, described by that chapter [~~section~~]; and

(4) the powers of a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.31. CONFORMING AMENDMENT. Section 3802.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3802.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code; and

(3) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and

maintain projects described by that chapter [~~section~~].

SECTION 3.32. CONFORMING AMENDMENT. Section 3803.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3803.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, and authority of a district created under Chapter 375, Local Government Code;

(3) the powers given to a corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including:

(A) the power to own, operate, acquire, construct, lease, improve, and maintain the projects described by that Act and this chapter and any other authorized project; and

(B) the power to acquire land and other property in accordance with Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; and

(4) the power to create, tax, assess, and hold elections in a defined area under Chapter 54, Water Code, to provide improvements or services in the defined area for any project or activity the district is authorized to acquire, construct, improve, or provide.

SECTION 3.33. CONFORMING AMENDMENT. Section 3804.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3804.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code; and

(3) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects.

SECTION 3.34. CONFORMING AMENDMENT. Section 3805.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3805.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code;

(3) the powers, duties, and contracting authority specified by Subchapters H and I, Chapter 49, Water Code;

(4) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain the projects described by that chapter [~~section~~]; and

(5) the powers of a housing finance corporation

created under Chapter 394, Local Government Code.

SECTION 3.35. CONFORMING AMENDMENT. Section 3806.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3806.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code; and

(3) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects.

SECTION 3.36. CONFORMING AMENDMENT. Section 3807.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3807.101. POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created; and

(2) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects.

SECTION 3.37. CONFORMING AMENDMENT. Section 3808.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3808.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects; and

(3) the powers given to a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.38. CONFORMING AMENDMENT. Section 3809.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3809.101. DISTRICT POWERS. The district may exercise the powers given to:

(1) a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; and

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.39. CONFORMING AMENDMENT. Section 3810.101(a), Special District Local Laws Code, is amended to read as follows:

(a) The district may exercise the powers given to:

(1) a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~];

(2) a housing finance corporation created under

Chapter 394, Local Government Code, to provide housing or residential development projects in the district; and

(3) an eligible political subdivision under Chapter 221, Natural Resources Code.

SECTION 3.40. CONFORMING AMENDMENT. Section 3811.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3811.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects; and

(3) the powers given to a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.41. CONFORMING AMENDMENT. Section 3812.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3812.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created; and

(2) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects.

SECTION 3.42. CONFORMING AMENDMENT. Section 3813.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3813.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the powers and duties of a municipal management district under Subchapter E, Chapter 375, Local Government Code; and

(3) the powers given to a [~~an industrial development~~] corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.43. CONFORMING AMENDMENT. Section 3814.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3814.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter [~~section~~]; and

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.44. CONFORMING AMENDMENT. Section 3815.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3815.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the power to own, operate, acquire, construct, lease, improve, and maintain projects; and

(3) the powers given to a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.45. CONFORMING AMENDMENT. Section 3816.101(b), Special District Local Laws Code, is amended to read as follows:

(b) The district may exercise the powers given to:

(1) a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; or

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.46. CONFORMING AMENDMENT. Section 3817.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3817.101. EXERCISE OF POWERS OF DEVELOPMENT CORPORATION. The district may exercise the powers of a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.47. CONFORMING AMENDMENT. Section 3819.101,

Special District Local Laws Code, is amended to read as follows:

Sec. 3819.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that chapter [~~section~~];

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district; and

(3) a municipality under Chapter 380, Local Government Code.

SECTION 3.48. CONFORMING AMENDMENT. Section 3820.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3820.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that chapter [~~section~~];

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district; and

(3) a municipality under Chapter 380, Local Government Code.

SECTION 3.49. CONFORMING AMENDMENT. Section 3821.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3821.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that chapter [~~section~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.50. CONFORMING AMENDMENT. Section 3822.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3822.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that chapter [~~section~~];

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district; and

(3) a municipality under Chapter 380, Local Government Code.

SECTION 3.51. CONFORMING AMENDMENT. Section 3823.101,

Special District Local Laws Code, is amended to read as follows:

Sec. 3823.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.52. CONFORMING AMENDMENT. Section 3824.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3824.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that chapter [~~section~~];

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district;

(3) a municipality under Chapter 380, Local Government Code;

(4) an entity described in Chapters 284 and 441, Transportation Code; and

(5) a district governed by Subchapters E and M, Chapter 60, Water Code, and Section 61.116, Water Code.

SECTION 3.53. CONFORMING AMENDMENT. Section 3828.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3828.101. GENERAL POWERS AND DUTIES. The district has the powers and duties provided by:

(1) the general laws relating to conservation and reclamation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 49 and 54, Water Code, except that the district's bonds and other securities are not subject to the jurisdiction or supervision of the commission under Chapter 49, Water Code, or other law;

(2) the general laws relating to road districts and road utility districts created under Section 52(b), Article III, Texas Constitution, including Chapter 441, Transportation Code;

(3) Chapter 372, Local Government Code, in the same manner as a municipality or a county;

(4) Chapter 375, Local Government Code; and

(5) Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.54. CONFORMING AMENDMENT. Section 3829.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3829.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain

projects described by that chapter [~~section~~];

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district; and

(3) a municipality under Chapter 380, Local Government Code.

SECTION 3.55. CONFORMING AMENDMENT. Section 3830.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3830.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.56. CONFORMING AMENDMENT. Section 3831.107(b), Special District Local Laws Code, is amended to read as follows:

(b) Section 375.221, Local Government Code, does not apply to a contract between the district and:

(1) another governmental entity;

(2) a nonprofit corporation, including a scientific research corporation; or

(3) a corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.57. CONFORMING AMENDMENT. Section 3834.101,

Special District Local Laws Code, is amended to read as follows:

Sec. 3834.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.58. CONFORMING AMENDMENT. Section 3835.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3835.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter [~~section~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.59. CONFORMING AMENDMENT. Section 3835.158(a), Special District Local Laws Code, is amended to read as follows:

(a) The district may issue by competitive bid or negotiated sale bonds or other obligations payable wholly or partly from taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay

for any authorized purpose of the district. The sources of money may include economic development money contributed by the City of Richmond or Rosenberg or by an economic development corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.60. CONFORMING AMENDMENT. Section 3838.001(3), Special District Local Laws Code, is amended to read as follows:

(3) "Economic development corporation" means a corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.61. CONFORMING AMENDMENT. Section 3838.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3838.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to an economic development corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter [~~section~~].

SECTION 3.62. CONFORMING AMENDMENT. Section 3841.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3841.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) an economic development corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act~~

~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter [~~section~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.63. CONFORMING AMENDMENT. Section 3843.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3843.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code;

(3) the powers, duties, and contracting authority specified by Subchapters H and I, Chapter 49, Water Code;

(4) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain the projects described by that chapter [~~section~~]; and

(5) the powers of a housing finance corporation created under Chapter 394, Local Government Code.

SECTION 3.64. CONFORMING AMENDMENT. Section 3844.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3844.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes

for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code;

(3) the powers, duties, and contracting authority specified by Subchapters H and I, Chapter 49, Water Code;

(4) the powers given to a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, and maintain the projects described by that chapter [~~section~~]; and

(5) the powers of a housing finance corporation created under Chapter 394, Local Government Code.

SECTION 3.65. CONFORMING AMENDMENT. Section 3847.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3847.101. EXERCISE OF POWERS OF DEVELOPMENT CORPORATION. The district may exercise the powers of a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.66. CONFORMING AMENDMENT. Section 3850.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3850.101. EXERCISE OF POWERS OF DEVELOPMENT CORPORATION. The district may exercise the powers of a corporation created under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire,

construct, lease, improve, and maintain projects described by that chapter [~~section~~].

SECTION 3.67. CONFORMING AMENDMENT. Section 3852.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3852.101. ADDITIONAL DISTRICT POWERS. The district may exercise the powers given to a corporation created under Chapter 504 or 505, Local Government Code [~~Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

SECTION 3.68. CONFORMING AMENDMENT. Section 3853.101, Special District Local Laws Code, is amended to read as follows:

Sec. 3853.101. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter [~~section~~]; and

(2) a housing finance corporation under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 3.69. CONFORMING AMENDMENT. Section 23.55(f), Tax Code, is amended to read as follows:

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of:

(1) a sale for right-of-way;

(2) a condemnation;

(3) a transfer of the property to the state or a political subdivision of the state to be used for a public purpose; or

(4) a transfer of the property from the state, a political subdivision of the state, or a nonprofit corporation created by a municipality with a population of more than one million under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~] to an individual or a business entity for purposes of economic development if the comptroller determines that the economic development is likely to generate for deposit in the general revenue fund during the next two fiscal bienniums an amount of taxes and other revenues that equals or exceeds 20 times the amount of additional taxes and interest that would have been imposed under Subsection (a) had the sanctions provided by that subsection applied to the transfer.

SECTION 3.70. CONFORMING AMENDMENT. Section 25.07(b), Tax Code, is amended to read as follows:

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or

a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D)(i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], by the same incorporated city or town which owns the airport;

(4) the interest is in a part of:

(A) a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(B) a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by an incorporated city or town as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission;

(5) the interest involves only the right to use the property for grazing or other agricultural purposes;

(6) the property is owned by the Texas National Research Laboratory Commission or by a corporation formed by the Texas National Research Laboratory Commission under Section 465.008(g), Government Code, and is used or is useful in connection with an eligible undertaking as defined by Section 465.021, Government Code; or

(7) the property is:

(A) owned by a municipality, a public port, or a navigation district created or operating under Section 59, Article XVI, Texas Constitution, or under a statute enacted under Section 59, Article XVI, Texas Constitution; and

(B) used as an aid or facility incidental to or useful in the operation or development of a port or waterway or in aid of navigation-related commerce.

SECTION 3.71. CONFORMING AMENDMENT. Section 151.341(a), Tax Code, is amended to read as follows:

(a) A taxable item sold, leased, or rented to or stored,

used, or consumed by a nonprofit corporation formed under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], is exempted from the taxes imposed by this chapter if the item is for the exclusive use and benefit of the nonprofit corporation.

SECTION 3.72. CONFORMING AMENDMENT. Section 171.074, Tax Code, is amended to read as follows:

Sec. 171.074. EXEMPTION--DEVELOPMENT CORPORATION. A nonprofit corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~] is exempted from the franchise tax.

SECTION 3.73. CONFORMING AMENDMENT. Section 321.101(i), Tax Code, is amended to read as follows:

(i) A municipality for which the adoption or increase of a sales and use tax approved by the voters in an election held after May 1, 1995, and before December 31, 1995, is invalid because the election combined into a single proposition proposal for adopting an economic development sales and use tax under Chapter 505, Local Government Code [~~Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and an additional sales and use tax under Subsection (b) may adopt or increase the sales and use tax previously approved by the voters by ordinance or resolution of the governing body of the municipality. If the governing body of the municipality adopts or increases the sales and use tax under this subsection, the municipal secretary shall

send to the comptroller by certified or registered mail a certified copy of the ordinance or resolution. The tax takes effect on the first day of the month following the expiration of the calendar quarter occurring after the date on which the comptroller receives the ordinance or resolution.

SECTION 3.74. CONFORMING AMENDMENT. Section 452.6025(a), Transportation Code, is amended to read as follows:

(a) In this section, "special sales and use tax" means:

(1) a sales and use tax levied by a municipality under:

(A) Chapter 504 or 505, Local Government Code [~~Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~];

(B) Section 379A.081, Local Government Code, for the benefit of a municipal development corporation; or

(C) Section 363.055, Local Government Code, for the benefit of a crime control and prevention district; or

(2) an additional municipal sales and use tax levied by a municipality under Chapter 321, Tax Code.

SECTION 3.75. CONFORMING AMENDMENT. Section 152.051(c), Water Code, is amended to read as follows:

(c) Sections 501.052, 501.053, 501.056, 501.057(b) and (c), 501.058, 501.062, 501.063, 501.064, except as that section applies to amending a corporation's bylaws, 501.065, 501.066, 501.068-501.072, 501.401-501.406, and Subchapters G and H, Chapter 501, Local Government Code [~~5-20 and 33-36, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], apply to a corporation created under this section, except that in those

sections:

(1) a reference to the Development Corporation [~~that~~] Act (Subtitle C1, Title 12, Local Government Code) includes this chapter; and

(2) a reference to a unit includes a river authority to which this chapter applies.

SECTION 3.76. RENUMBERING. (a) The following changes are made to Subtitle A, Title 13, Local Government Code, for organizational purposes:

(1) Chapter 401, Local Government Code, is renumbered as Chapter 551, Local Government Code, and sections in the renumbered chapter, Sections 401.001, 401.002, 401.003, 401.004, and 401.005, are renumbered as Sections 551.001, 551.002, 551.003, 551.004, and 551.005, respectively; and

(2) Chapter 402, Local Government Code, is renumbered as Chapter 552, Local Government Code, and:

(A) Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.001, 402.002, 402.0025, and 402.003, are renumbered as Sections 552.001, 552.002, 552.0025, and 552.003, respectively;

(B) Subchapter B in the renumbered chapter is redesignated as Subchapter B, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.011, 402.012, 402.013, 402.014, 402.015, 402.016, 402.017, 402.018, 402.019, 402.020, 402.0205, 402.021, 402.022, and 402.023, are renumbered as Sections 552.011, 552.012, 552.013, 552.014,

552.015, 552.016, 552.017, 552.018, 552.019, 552.020, 552.0205, 552.021, 552.022, and 552.023, respectively;

(C) Subchapter C in the renumbered chapter is redesignated as Subchapter C, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.041, 402.042, 402.043, 402.044, 402.045, 402.0451, 402.046, 402.047, 402.048, 402.049, 402.050, 402.051, 402.052, 402.053, and 402.054, are renumbered as Sections 552.041, 552.042, 552.043, 552.044, 552.045, 552.0451, 552.046, 552.047, 552.048, 552.049, 552.050, 552.051, 552.052, 552.053, and 552.054, respectively;

(D) Subchapter D in the renumbered chapter is redesignated as Subchapter D, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.061, 402.062, 402.063, 402.064, 402.065, 402.066, 402.067, 402,068, 402.069, 402.070, 402.071, 402.072, 402.073, 402.074, and 402.075, are renumbered as Sections 552.061, 552.062, 552.063, 552.064, 552.065, 552.066, 552.067, 552.068, 552.069, 552.070, 552.071, 552.072, 552.073, 552.074, and 552.075, respectively;

(E) Subchapter E in the renumbered chapter is redesignated as Subchapter E, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.091 and 402.092, are renumbered as Sections 552.091 and 552.092, respectively;

(F) Subchapter F in the renumbered chapter is redesignated as Subchapter F, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.101, 402.102, 402.103, 402.104, and 402.105, are renumbered as Sections

552.101, 552.102, 552.103, 552.104, and 552.105, respectively;

(G) Subchapter G in the renumbered chapter is redesignated as Subchapter G, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.121, 402.122, 402.123, and 402.124, are renumbered as Sections 552.121, 552.122, 552.123, and 552.124, respectively;

(H) Subchapter H in the renumbered chapter is redesignated as Subchapter H, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.141 and 402.142, are renumbered as Sections 552.141 and 552.142, respectively; and

(I) Subchapter Z in the renumbered chapter is redesignated as Subchapter Z, Chapter 552, Local Government Code, and sections in the redesignated subchapter, Sections 402.901, 402.902, 402.903, 402.904, 402.905, 402.906, 402.907, 402.909, and 402.910, are renumbered as Sections 552.901, 552.902, 552.903, 552.904, 552.905, 552.906, 552.907, 552.909, and 552.910, respectively.

(b) The following changes are made to Subtitle B, Title 13, Local Government Code, for organizational purposes:

(1) Chapter 411, Local Government Code, is renumbered as Chapter 561, Local Government Code, and sections in the renumbered chapter, Sections 411.001, 411.002, 411.003, 411.004, 411.005, 411.006, 411.007, 411.008, and 411.009, are renumbered as Sections 561.001, 561.002, 561.003, 561.004, 561.005, 561.006, 561.007, 561.008, and 561.009, respectively;

(2) Chapter 412, Local Government Code, is renumbered

as Chapter 562, Local Government Code, and:

(A) Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 562, Local Government Code, and sections in the redesignated subchapter, Sections 412.001, 412.002, 412.003, 412.004, and 412.005, are renumbered as Sections 562.001, 562.002, 562.003, 562.004, and 562.005, respectively; and

(B) Subchapter B in the renumbered chapter is redesignated as Subchapter B, Chapter 562, Local Government Code, and sections in the redesignated subchapter, Sections 412.011, 412.012, 412.013, 412,014, 412.015, and 412.016, are renumbered as Sections 562.011, 562.012, 562.013, 562.014, 562.015, and 562.016, respectively; and

(3) Chapter 413, Local Government Code, is renumbered as Chapter 563, Local Government Code, and:

(A) Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 563, Local Government Code, and sections in the redesignated subchapter, Sections 413.001 and 413.002, are renumbered as Sections 563.001 and 563.002, respectively;

(B) Subchapter B in the renumbered chapter is redesignated as Subchapter B, Chapter 563, Local Government Code, and sections in the redesignated subchapter, Sections 413.051, 413.052, 413.053, 413.054, 413.055, 413.056, 413.057, 413.058, 413.059, 413.060, 413.061, 413.062, 413.063, 413.064, 413.065, 413.066, 413.067, and 413.068, are renumbered as Sections 563.051, 563.052, 563.053, 563.054, 563.055, 563.056, 563.057, 563.058, 563.059, 563.060, 563.061, 563.062, 563.063, 563.064, 563.065,

563.066, 563.067, and 563.068, respectively;

(C) Subchapter C in the renumbered chapter is redesignated as Subchapter C, Chapter 563, Local Government Code, and sections in the redesignated subchapter, Sections 413.101, 413.102, 413.103, 413.104, 413.105, 413.106, and 413.107, are renumbered as Sections 563.101, 563.102, 563.103, 563.104, 563.105, 563.106, and 563.107, respectively; and

(D) Subchapter D in the renumbered chapter is redesignated as Subchapter D, Chapter 563, Local Government Code, and sections in the redesignated subchapter, Sections 413.151, 413.152, 413.153, 413.154, and 413.155, are renumbered as Sections 563.151, 563.152, 563.153, 563.154, and 563.155, respectively.

(c) The following changes are made to Subtitle C, Title 13, Local Government Code, for organizational purposes:

(1) Chapter 421, Local Government Code, is renumbered as Chapter 571, Local Government Code, and Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 571, Local Government Code, and sections in the redesignated subchapter, Sections 421.001, 421.002, 421.003, 421.004, 421.005, 421.006, 421.007, 421.008, 421.009, 421.010, and 421.011, are renumbered as Sections 571.001, 571.002, 571.003, 571.004, 571.005, 571.006, 571.007, 571.008, 571.009, 571.010, and 571.011, respectively;

(2) Chapter 422, Local Government Code, is renumbered as Chapter 572, Local Government Code, and:

(A) Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 572, Local Government Code, and sections in the redesignated subchapter, Sections 422.001,

422.002, 422.003, and 422.004, are renumbered as Sections 572.001, 572.002, 572.003, and 572.004, respectively;

(B) Subchapter B in the renumbered chapter is redesignated as Subchapter B, Chapter 572, Local Government Code, and sections in the redesignated subchapter, Sections 422.011, 422.012, 422.013, and 422.014, are renumbered as Sections 572.011, 572.012, 572.013, and 572.014, respectively; and

(C) Subchapter C in the renumbered chapter is redesignated as Subchapter C, Chapter 572, Local Government Code, and sections in the redesignated subchapter, Sections 422.051, 422.052, 422.053, 422.054, 422.055, 422.056, 422.057, 422.058, 422.059, 422.060, 422.061, 422.062, 422.063, and 422.064, are renumbered as Sections 572.051, 572.052, 572.053, 572.054, 572.055, 572.056, 572.057, 572.058, 572.059, 572.060, 572.061, 572.062, 572.063, and 572.064, respectively;

(3) Chapter 423, Local Government Code, is renumbered as Chapter 573, Local Government Code, and sections in the renumbered chapter, Sections 423.001, 423.002, and 423.003, are renumbered as Sections 573.001, 573.002, and 573.003, respectively; and

(4) Chapter 430, Local Government Code, is renumbered as Chapter 580, Local Government Code, and sections in the renumbered chapter, Sections 430.001, 430.002, and 430.003, are renumbered as Sections 580.001, 580.002, and 580.003, respectively.

(d) Chapter 431, Local Government Code, is renumbered for organizational purposes as Chapter 601, Local Government Code, and:

(1) Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 601, Local Government Code, and the section in the redesignated subchapter, Section 431.001, is renumbered as Section 601.001; and

(2) Subchapter B in the renumbered chapter is redesignated as Subchapter B, Chapter 601, Local Government Code, and the sections in the redesignated subchapter, Sections 431.021, 431.022, 431.023, 431.024, 431.025, 431.026, 431.027, 431.028, 431.029, 431.030, 431.031, 431.032, 431.033, 431.034, 431.035, 431.036, 431.037, 431.038, 431.039, 431.040, 431.041, 431.042, 431.043, and 431.044, are renumbered as Sections 601.021, 601.022, 601.023, 601.024, 601.025, 601.026, 601.027, 601.028, 601.029, 601.030, 601.031, 601.032, 601.033, 601.034, 601.035, 601.036, 601.037, 601.038, 601.039, 601.040, 601.041, 601.042, 601.043, and 601.044, respectively.

(e) Chapter 445, Local Government Code, is renumbered for organizational purposes as Chapter 615, Local Government Code, and:

(1) Subchapter A in the renumbered chapter is redesignated as Subchapter A, Chapter 615, Local Government Code, and the sections in the redesignated subchapter, Sections 445.001, 445.002, 445.003, and 445.004, are renumbered as Sections 615.001, 615.002, 615.003, and 615.004, respectively;

(2) Subchapter B in the renumbered chapter is redesignated as Subchapter B, Chapter 615, Local Government Code, and the section in the redesignated subchapter, Section 445.011, is renumbered as Section 615.011;

(3) Subchapter C in the renumbered chapter is

redesignated as Subchapter C, Chapter 615, Local Government Code, and the sections in the redesignated subchapter, Sections 445.021, 445.022, 445.023, and 445.024, are renumbered as Sections 615.021, 615.022, 615.023, and 615.024, respectively; and

(4) Subchapter D in the renumbered chapter is redesignated as Subchapter D, Chapter 615, Local Government Code, and the sections in the redesignated subchapter, Sections 445.101, 445.102, and 445.103, are renumbered as Sections 615.101, 615.102, and 615.103, respectively.

SECTION 3.77. CONFORMING AMENDMENT. The following reference changes are made to conform the provisions amended to the renumbering changes made by Section 3.76 of this article:

(1) Section 30.00005(b), Government Code, is amended to read as follows:

(b) The court has jurisdiction over criminal cases arising under ordinances authorized by Sections 215.072, 217.042, 341.903, and 551.002 [~~401.002~~], Local Government Code.

(2) Section 364.037(a), Health and Safety Code, is amended to read as follows:

(a) A county or public agency that offers solid waste disposal services under this subchapter may enter an agreement for the collection of unpaid utility or solid waste disposal services fees with:

(1) another county or public agency that provides solid waste disposal services under this subchapter;

(2) a municipality that operates a utility system, as defined by Section 552.001 [~~402.001~~], Local Government Code; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(3) Section 252.022(b), Local Government Code, is amended to read as follows:

(b) This chapter does not apply to bonds or warrants issued under Subchapter A, Chapter 571 [~~421~~].

(4) Section 271.045(c), Local Government Code, is amended to read as follows:

(c) The governing body of a municipality may issue certificates of obligation to pay all or part of a municipality's obligations incurred by contract for interests in and rights to water or sewer treatment capacity in connection with a water supply and transmission project or sewer treatment or collection project to be constructed in whole or in part on behalf of the municipality by another governmental entity or political subdivision pursuant to a written agreement expressly authorized under Section 552.014 [~~402.014~~] of this code or Section 791.026, Government Code.

(5) Subdivisions (1) and (8), Section 552.044, Local Government Code, as renumbered from Section 402.044, Local Government Code, by this Act, are amended to read as follows:

(1)(A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1.18 million which is operating a drainage utility system under this chapter, means a lot or tract,

but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 552.053(c)(2) [~~402.053(c)(2)~~] and (c)(3) do not apply to a municipality described in this subdivision.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 552.0451 [~~402.0451~~], may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 400,000 population located in one or more counties of less than 600,000 population according to the most recent federal census;

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or

(C) as provided by Section 552.0451 [~~402.0451~~].

(6) Subsection (c), Section 552.0451, Local

Government Code, as renumbered from Section 402.0451, Local Government Code, by this Act, is amended to read as follows:

(c) Charges and methods of assessment agreed to under Subsection (b)(2) must comply with Section 552.047 [~~402.047~~].

(7) Subsection (a), Section 552.052, Local Government Code, as renumbered from Section 402.052, Local Government Code, by this Act, is amended to read as follows:

(a) If, after at least five years of substantially continuous operation of a municipal drainage system, the governing body of the municipality determines that the system should be discontinued, that the powers under this subchapter should be revoked, and that provision for municipal drainage should be made by other revenues, the governing body may adopt an ordinance to that effect after providing notice and a public hearing as provided by Section 552.045 [~~402.045~~].

(8) Subsection (c), Section 552.065, Local Government Code, as renumbered from Section 402.065, Local Government Code, by this Act, is amended to read as follows:

(c) An assessment against benefitted property under this section is collectable with interest, cost of collection, and reasonable attorney's fees. The assessment is a first and prior lien on the assessed property and the lien takes effect on the date that a notice of proposed improvements is made under Section 552.067 [~~402.067~~]. The lien is superior to any other lien or claim except a state, county, school district, or municipal property tax lien. The assessment is a personal liability and charge against the owners of the assessed property on the date on which the lien takes

effect, whether or not the owners are named in a notice, instrument, certificate, or ordinance provided for under this subchapter.

(9) Subsection (a), Section 552.067, Local Government Code, as renumbered from Section 402.067, Local Government Code, by this Act, is amended to read as follows:

(a) If the governing body of the municipality proposes to levy or assess any of the cost of improvements against the benefitted property as provided by Section 552.065 [~~402.065~~], the governing body may file a notice, signed on behalf of the municipality by the municipal clerk, secretary, mayor, or other officer performing the duties of those officers, with the county clerk of the county in which the property is located. The notice must substantially show that the governing body has determined by order, directive, or otherwise that water or sewer system improvements are necessary, identify the required improvements by location or otherwise, state that a portion of the cost of the improvements is to be or has been specially assessed as a lien against the benefitted property, and describe that property. One notice may contain any number of systems or improvements.

(10) Subsection (b), Section 552.071, Local Government Code, as renumbered from Section 402.071, Local Government Code, by this Act, is amended to read as follows:

(b) A person who owns or claims an interest in property against which a reassessment is levied has the same right of appeal provided under this subchapter for an original assessment. If the person does not appeal within 15 days after the date of the hearing relating to the reassessment, the provisions of Section 552.069

[~~402.069~~] relating to waiver, bar, estoppel, and defense apply.

(11) Section 552.074, Local Government Code, as renumbered from Section 402.074, Local Government Code, by this Act, is amended to read as follows:

Sec. 552.074 [~~402.074~~]. AUTHORIZED INVESTMENT. A certificate of special assessment issued under this subchapter, including a certificate issued under a joint proceeding under Section 552.072 [~~402.072~~], is a legal and authorized investment for a bank, savings bank, trust company, savings and loan association, insurance company, sinking fund of a municipality, county, school district, or other political subdivision of this state, and for all other public funds of this state or an agency of this state.

(12) Section 552.075, Local Government Code, as renumbered from Section 402.075, Local Government Code, by this Act, is amended to read as follows:

Sec. 552.075 [~~402.075~~]. HOME-RULE MUNICIPALITY. A home-rule municipality to which this subchapter applies may adopt plans and specifications for improvements as provided by this subchapter and may pay in cash to the contractor who is the successful bidder that part of the cost assessed against the owner and the benefitted property. The municipality may reimburse itself by levying an assessment against the benefitted property and its owner after notice and hearing as provided by this subchapter. The municipality may reimburse itself up to the amount of the enhancement in value represented by the benefits and as permitted under this subchapter and may issue assignable certificates in favor of the municipality for the assessment. The certificates are

enforceable in the manner provided by Section 552.065 [~~402.065~~]. The municipality may use its own forces to make the improvements if the work may be performed more expeditiously and economically in that manner.

(13) Subsection (a), Section 552.910, Local Government Code, as renumbered from Section 402.910, Local Government Code, by this Act, is amended to read as follows:

(a) A municipality that operates a utility system, as defined by Section 552.001 [~~402.001~~], or provides solid waste disposal services may enter an agreement for the collection of unpaid utility charges or solid waste disposal services fees with:

(1) another municipality that operates a utility system;

(2) a county or public agency that provides solid waste disposal services; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(14) Section 562.015, Local Government Code, as renumbered from Section 412.015, Local Government Code, by this Act, is amended to read as follows:

Sec. 562.015 [~~412.015~~]. COUNTY WATER AND SEWER UTILITY. An affected county, as defined by Section 16.341, Water Code, may own, operate, or maintain a water or sewer utility in the same manner as a municipality under Chapter 552 [~~402~~].

(15) Subsection (a), Section 562.016, Local Government Code, as renumbered from Section 412.016, Local

Government Code, by this Act, is amended to read as follows:

(a) A county may acquire, own, operate, or contract for the operation of, a water or sewer utility system to serve an unincorporated area of the county in the same manner and under the same regulations as a municipality under Chapter 552 [~~402~~]. The county must comply with all provisions of Chapter 13, Water Code, that apply to a municipality. However, a county with a population of 2.8 million or more and any adjoining county may, with the municipality's approval, serve an area within a municipality.

(16) Section 563.001, Local Government Code, as renumbered from Section 413.001, Local Government Code, by this Act, is amended to read as follows:

Sec. 563.001 [~~413.001~~]. APPLICABILITY OF CHAPTER. This chapter applies only to a county that:

(1) adopts an order under Section 563.052 [~~413.052~~]; and

(2) has a population of 10,000 or less, according to the most recent federal census, on the date on which the order is adopted.

(17) Section 563.051, Local Government Code, as renumbered from Section 413.051, Local Government Code, by this Act, is amended to read as follows:

Sec. 563.051 [~~413.051~~]. DEFINITION. In this subchapter, "board" means a county utility system board established under Section 563.052 [~~413.052~~].

(18) Section 563.067, Local Government Code, as renumbered from Section 413.067, Local Government Code, by this

Act, is amended to read as follows:

Sec. 563.067 [~~413.067~~]. AUTHORITY TO ISSUE REVENUE OBLIGATIONS. The board by resolution may authorize the issuance of obligations for one or more of the purposes described by Section 563.066(b) [~~413.066(b)~~] that are payable solely from the revenue of one or more systems.

(19) Subsection (a), Section 571.006, Local Government Code, as renumbered from Section 421.006, Local Government Code, by this Act, is amended to read as follows:

(a) The commissioners court or municipal authority may impose a tax to pay the debt incurred under Section 571.002 [~~421.002~~]. The rate of the tax in any year may not exceed 50 cents on each $100 of the taxable value of property taxable by the county or municipality.

(20) Section 572.055, Local Government Code, as renumbered from Section 422.055, Local Government Code, by this Act, is amended to read as follows:

Sec. 572.055 [~~422.055~~]. CONTENTS OF CONCURRENT ORDINANCE. A concurrent ordinance creating a public utility agency under Section 572.052 [~~422.052~~] or re-creating an agency under Section 572.053 [~~422.053~~] must, as adopted by each public entity:

(1) contain identical provisions;

(2) define the boundaries of the agency to include the territory within the boundaries of each participating public entity as the boundaries are changed periodically;

(3) designate the name of the agency; and

(4) designate the number, place, initial term, and

manner of appointment of directors in accordance with Section 572.057 [~~422.057~~].

(21) Section 86.014(a), Parks and Wildlife Code, is amended to read as follows:

(a) The commission shall grant to any county, city, or town that is authorized under Subchapter A, Chapter 571 [~~421~~], Local Government Code, to build and maintain seawalls a permit for the taking of marl, sand, gravel, shell, or mudshell to be used for the building, extending, protecting, maintaining, or improving any seawall, breakwater, levee, dike, floodway, or drainway.

(22) Section 3503.101(b), Special District Local Laws Code, is amended to read as follows:

(b) The authority may exercise any power or duty necessary or appropriate to carry out a project described by Section 3503.003(a)(3) and the purposes of this chapter, including the power to:

(1) sue and be sued, and plead and be impleaded, in its own name;

(2) adopt an official seal;

(3) adopt, enforce, and amend rules for the conduct of its affairs;

(4) acquire, hold, own, pledge, and dispose of its revenue, income, receipts, and money from any source;

(5) select its depository;

(6) acquire, own, rent, lease, accept, hold, or dispose of any property, or any interest in property, including rights or easements, in performing its duties and exercising its

powers under this chapter, by purchase, exchange, gift, assignment, sale, lease, or other method;

(7) hold, manage, operate, or improve the property;

(8) sell, assign, lease, encumber, mortgage, or otherwise dispose of property, or any interest in property, and relinquish a property right, title, claim, lien, interest, easement, or demand, however acquired;

(9) perform an activity authorized by Subdivision (8) by public or private sale, with or without public bidding, notwithstanding any other law;

(10) lease or rent any land and building, structure, or facility from or to any person to carry out a chapter purpose;

(11) request and accept an appropriation, grant, allocation, subsidy, guarantee, aid, service, labor, material, or gift, from the federal government, the state, a public agency or political subdivision, or any other source;

(12) operate and maintain an office and appoint and determine the duties, tenure, qualifications, and compensation of officers, employees, agents, professional advisors and counselors, including financial consultants, accountants, attorneys, architects, engineers, appraisers, and financing experts, as considered necessary or advisable by the board;

(13) borrow money and issue bonds, payable solely from all or a portion of any authority revenue, by resolution or order of the board and without the necessity of an election;

(14) set and collect rents, rates, fees, and charges regarding the property and any services provided by the authority;

(15) exercise the powers Chapters 373 and 380, Local Government Code, grant to a municipality for the development of housing and expansion of economic development and commercial activity;

(16) exercise the powers Chapter 49, Water Code, grants to a general-law district;

(17) exercise the powers Chapter 54, Water Code, grants to a municipal utility district;

(18) exercise the powers Chapter 441, Transportation Code, grants to a road utility district;

(19) exercise the powers Subchapter C, Chapter 271, Local Government Code, grants to a municipality or county;

(20) exercise the powers Chapter 552 [~~402~~], Local Government Code, grants to a municipality for the provision of municipal utilities;

(21) contract and be contracted with, in the authority's own name, another person in the performance of the authority's powers or duties to carry out a project described by Section 3503.003(a)(3), or to accomplish the purposes of this chapter for a period of years, on the terms, and by competitive bidding or by negotiated contract, all as the board considers appropriate, desirable, and in the best interests of the authority and the accomplishment of chapter purposes; and

(22) acquire, hold, own, sell, assign, lease, encumber, mortgage, or otherwise dispose of any real, personal, or mixed property located outside the perimeter of the property described by Section 3503.004 if the other property enhances or

facilitates the development, redevelopment, maintenance, or expansion of new and existing businesses, industry, or commercial activity on the property.

(23) Section 8104.204(d), Special District Local Laws Code, is amended to read as follows:

(d) Section 552.014 [~~402.014~~], Local Government Code, applies to any contract between the authority and a municipality, including the City of Baytown.

(24) Section 9501.002(a), Special District Local Laws Code, is amended to read as follows:

(a) The commissioners court and the governing body of a municipality in Matagorda County by resolution may establish a seawall commission to perform the functions described by Section 571.002 [~~421.002~~], Local Government Code.

(25) Section 9501.101, Special District Local Laws Code, is amended to read as follows:

Sec. 9501.101. COMMISSION POWERS. The commission may exercise the authority granted to a county or municipality under Section 571.002, 571.003, 571.004, or 571.005 or Section 571.011(a) [~~421.002, 421.003, 421.004, or 421.005 or Section 421.011(a)~~] or (b), Local Government Code.

(26) Section 9501.102, Special District Local Laws Code, is amended to read as follows:

Sec. 9501.102. AUTHORITY TO CONTRACT. The commission may enter into a contract relating to the performance of any function described by Section 571.002 [~~421.002~~], Local Government Code.

(27) Section 227.015, Transportation Code, is amended

to read as follows:

Sec. 227.015. LOCATION OF FACILITIES. Notwithstanding any other law, including Chapter 181, Utilities Code, Chapter 552 [~~402~~], Local Government Code, and Section 49.220, Water Code, the department may:

(1) specify the location of any facility on the Trans-Texas Corridor;

(2) direct the time and manner of construction of a public utility facility on the Trans-Texas Corridor; and

(3) direct the time and manner of construction or operation of any other facility on the Trans-Texas Corridor.

(28) Sections 227.081(a) and (e), Transportation Code, are amended to read as follows:

(a) Notwithstanding any other law, including Chapters 161, 162, 163, and 181, Utilities Code, Chapter 552 [~~402~~], Local Government Code, and Chapter 49, Water Code, and except as provided in Subsection (e), the department may require a person, including a governmental or private entity, to pay a fee as a condition of using any part of the Trans-Texas Corridor.

(e) If a public road is replaced or eliminated by the Trans-Texas Corridor and a facility used the right-of-way of that road under Chapter 161, 162, 163, or 181, Utilities Code, Chapter 552 [~~402~~], Local Government Code, or Chapter 49, Water Code, the department may not require the owner of that facility to pay a fee as a condition of using a segment of the Trans-Texas Corridor for the location of a replacement facility.

(29) Section 40.002, Utilities Code, is amended to

read as follows:

Sec. 40.002. DEFINITION. For purposes of this chapter, "body vested with the power to manage and operate a municipally owned utility" means a body created in accordance with Section 1502.070, Government Code, or Subchapter G, Chapter 552 [~~402~~], Local Government Code, or by municipal charter.

(30) Section 164.006, Utilities Code, is amended to read as follows:

Sec. 164.006. CONSTRUCTION WITH OTHER LAWS. To provide full authority for the execution of an agreement under this chapter, this chapter applies to a municipality as if this chapter were originally contained in Chapter 1501 or 1502, Government Code, or Chapter 552 [~~402~~], Local Government Code. This chapter prevails over any charter provision or general or special law.

(31) Section 26.049(h), Water Code, is amended to read as follows:

(h) When a home-rule municipality has a plan to control or minimize sanitary sewer overflows, Section 552.901 [~~402.901~~], Local Government Code, does not limit the power of a home-rule municipality, in exercising its home-rule powers under Section 5, Article XI, Texas Constitution, to maintain, repair, relocate, or replace a water or sanitary sewer lateral or service line on private property without making an assessment against the property or a person.

(32) Section 67.010(d), Water Code, is amended to read as follows:

(d) A political subdivision may contract with a corporation

under Section 552.014 [~~402.014~~], Local Government Code, to carry out this chapter. If a corporation issues bonds secured by a contract entered into under Section 552.014 [~~402.014~~], Local Government Code, the corporation is considered to be acting for or on behalf of that political subdivision for the purposes of Section 1201.002(1), Government Code. A political subdivision is authorized to approve by ordinance, resolution, or order the articles of incorporation and the bylaws of a corporation that is created for the purpose of constructing facilities under a contract as provided by Section 552.014 [~~402.014~~], Local Government Code.

(33) Section 221.006(c), Water Code, is amended to read as follows:

(c) The authority may execute contracts with municipalities in the state substantially in the manner prescribed by Section 552.020 [~~402.020~~], Local Government Code, for districts organized or created under Section 59, Article XVI, Texas Constitution, and may execute water supply contracts with other users of water.

SECTION 3.78. REPEALER. The Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is repealed.

ARTICLE 4. LEGISLATIVE INTENT; EFFECTIVE DATE

SECTION 4.01. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE. This Act is enacted under Section 43, Article III, Texas Constitution. No substantive change in law is intended by this Act.

SECTION 4.02. EFFECTIVE DATE. This Act takes effect April 1, 2009.

COMMITTEE AMENDMENT NO. 1

Amend H.B. 2278 as follows:

(1) On page 365, between lines 1 and 2, insert the following:

CHAPTER 2002. LIQUEFIED PETROLEUM GAS CONTAINERS

Sec. 2002.001. DEFINITIONS

Sec. 2002.002. NOTICE TO PROSPECTIVE PURCHASERS AND USERS

Sec. 2002.003. SUPPLY CONTRACT REQUIREMENT

Sec. 2002.004. FILLING OR REFILLING OF CONTAINER BY NONOWNER

Sec. 2002.005. CRIMINAL PENALTIES

CHAPTER 2002. LIQUEFIED PETROLEUM GAS CONTAINERS

Sec. 2002.001. DEFINITIONS. In this chapter:

(1) "Liquefied petroleum gas" means the hydrocarbon product extracted from natural gas or crude oil and commonly known as butane or propane.

(2) "Person" means an individual, association, or corporation. (V.A.C.S. Art. 8610a, Sec. (a).)

Sec. 2002.002. NOTICE TO PROSPECTIVE PURCHASERS AND USERS. A person in the business of leasing or selling liquefied petroleum gas containers shall give to each prospective purchaser or user of a container a written notice of the purchase or use options provided by that business, including, as applicable, options to purchase, lease, or lease-purchase. The notice must include a written statement that other persons in the business of leasing or selling liquefied petroleum gas containers may provide purchase or use options that include purchase, lease, and lease-purchase. (V.A.C.S. Art. 8610a, Sec. (b).)

Sec. 2002.003. SUPPLY CONTRACT REQUIREMENT. If a person in the business of leasing or selling liquefied petroleum gas containers signs a supply contract with another person, a separate agreement on the face of the supply contract must state that the supplier gave to the user, before the user signed the supply contract, the notice required by Section 2002.002. (V.A.C.S. Art. 8610a, Sec. (c).)

Sec. 2002.004. FILLING OR REFILLING OF CONTAINER BY NONOWNER. A person who is not the owner of a liquefied petroleum gas container may fill or refill the container if the person who occupies the premises where the container is located:

(1) requests the service; and

(2) signs a written request stating that:

(A) an emergency exists; and

(B) the owner is unavailable to fill or refill the container, as applicable. (V.A.C.S. Art. 8610a, Sec. (e).)

Sec. 2002.005. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) A person who is not the owner of a liquefied petroleum gas container commits an offense if the person:

(1) except as provided by Section 2002.004, without written authorization of the owner of the container sells, fills, refills, delivers or permits to be delivered, or uses the container for any purpose;

(2) obtains a written request under Section 2002.004 through misrepresentation; or

(3) defaces, removes, or conceals a name, mark,

initial, or device on the container without the written consent of the owner of the container.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $25 and not more than $200. (V.A.C.S. Art. 8610a, Secs. (d), (f), (g); Art. 8611 (part).)

(2) Strike page 390, line 12, through page 395, line 5, and renumber the subsequent sections of the article accordingly.

80R12649 CLG-D Morrison