THIRD REVISOR'S REPORT

CIVIL PRACTICE AND REMEDIES CODE

A NONSUBSTANTIVE REVISION OF THE STATUTES RELATING TO CIVIL PROCEDURE AND CIVIL REMEDIES AND LIABILITIES
(Including amendments made by Acts of the 68th Legislature, Regular Session and First Called Session, 1983)

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

Austin, Texas
April, 1984
Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-l, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

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

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

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

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

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

It is believed that an explanation such as is provided by this section will prove helpful to those who are not familiar with the purposes and objectives of the statutory revision program.

As explained in the foreword to this report, reviser's notes are intended as an aid to review the proposed code. Their primary purpose is to explain apparent differences between the source law and the revised law. They are part of the staff report to the legislature; they are not part of the bill enacting the code and, as a general rule, are not specifically considered by the legislature at the time of the code's enactment. The reviser's notes should not be considered an official commentary on the law being revised.

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

Revised Law

Sec. 1.003. INTERNAL REFERENCES. In this code:

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

Revisor's Note

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

[Chapters 2-4 reserved for expansion]
Sec. 5.001. RULE OF DECISION.

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

Revised Law

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

Source Law

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

Revisor's Note

The revised law omits the source law material relating to the continuance of the common law until altered or repealed by the legislature. Since the legislature has the inherent authority to alter or repeal law, the material is unnecessary.
CHAPTER 6. GOVERNMENTAL EXEMPTION FROM BOND AND SECURITY REQUIREMENTS

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

Sec. 6.002. CITIES EXEMPT FROM SECURITY FOR COURT COSTS

Sec. 6.003. WATER DISTRICTS EXEMPT FROM APPEAL BOND

CHAPTER 6. GOVERNMENTAL EXEMPTION FROM BOND AND SECURITY REQUIREMENTS

Revised Law

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

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

(1) this state;
(2) a department of this state;
(3) the head of a department of this state;
(4) a county of this state;
(5) the Federal Housing Administration;
(6) the Federal National Mortgage Association;
(7) the Government National Mortgage Association;
(8) the Veterans Administration;
(9) the administrator of veterans affairs; and
(10) any national mortgage savings and loan insurance corporation created by an act of congress as a national relief organization that operates on a statewide basis.

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

Source Law

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

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

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

Art. 2276. Neither the State of Texas, nor any county in the State of Texas, nor the Railroad Commission of Texas, nor the head of any department of the State of Texas, prosecuting or defending in any action in their official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case.
Revisor's Note


(2) The reference to the Railroad Commission in V.A.C.S. Article 2276 is omitted because that commission is a "state department."

(3) The references to the "Banking Commissioner of Texas" and the "State Banking Board" in V.A.C.S. Article 2072a are omitted because the board is a "state department" and the commissioner is included in the phrase "head of any state department."

Revised Law

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

Security for costs may not be required of an incorporated city or town of this state in an action, suit, or proceeding. (V.A.C.S. Art. 2072 (part).)

Source Law

Art. 2072. No security for costs shall be required of any incorporated city or town in any action, suit or proceeding...

Revisor's Note

See the conforming amendments to this code for the disposition of the provisions in V.A.C.S. Article 2072 relating to security for costs in suits by an executor, administrator, or guardian.

Revised Law

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

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

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

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

(3) a drainage district organized under state law.

(V.A.C.S. Art. 2276a.)

Source Law

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

Revisor's Note

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

Executors, administrators and
guardians appointed by the courts of this
State shall not be required to give bond on
any appeal or writ of error taken by them
in their fiduciary capacity.
CHAPTER 7. LIABILITY OF COURT OFFICERS

SUBCHAPTER A. LIABILITY OF OFFICER

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

Sec. 7.002. LIABILITY FOR DEPOSITS PENDING SUIT

Sec. 7.003. LIABILITY REGARDING EXECUTION OF WRITS

[Sections 7.004-7.010 reserved for expansion]

SUBCHAPTER B. LIABILITY OF ATTORNEY

Sec. 7.011. ATTORNEY'S LIABILITY FOR COSTS

[Sections 7.012-7.020 reserved for expansion]

SUBCHAPTER C. SUIT ON OFFICIAL BONDS

Sec. 7.021. SUIT ON OFFICIAL BONDS

CHAPTER 7. LIABILITY OF COURT OFFICERS

SUBCHAPTER A. LIABILITY OF OFFICER

Revised Law

Sec. 7.001. LIABILITY FOR REFUSAL OR NEGLECT IN PERFORMANCE OF OFFICIAL DUTIES. (a) A clerk, sheriff, or other officer who neglects or refuses to perform a duty required under Title 42, Revised Statutes, or under a provision of this code derived from that title is liable for damages in a suit brought by a person injured by the officer's neglect or refusal. (b) The officer may be punished for contempt of court for neglect or refusal in the performance of those duties. (V.A.C.S. Art. 2287.)

Source Law

Art. 2287. Any clerk, sheriff, or other officer who neglects or refuses to perform any duty required of him under any provision of this title shall be liable to damages at the suit of any person injured, and may be punished for contempt of court.
Revised Law
Sec. 7.002. LIABILITY FOR DEPOSITS PENDING SUIT. (a) An
officer who has custody of a sum of money, a debt, an instrument,
or other property paid to or deposited with a court pending the
outcome of a cause of action shall seal the property in a secure
package in a safe or bank vault that is accessible and subject to
the control of the court.

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

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

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

Source Law
Art. 2290. The officer having custody of any
money, debt, script, instrument of writing, or other
article paid or deposited in court during the progress
of any cause to abide the result of any legal
proceeding, shall seal up in a secure package the
identical money or other article so received and
deposit it in some safe or bank vault, keeping it
always accessible and subject to the control of the
court; and he shall also keep in his office as a part
of the records thereof a correct itemized statement of
such deposit, on what account received, and the
disposition made of the same. When his term of office
expires, such officer shall turn over to his successor
all of such trust funds and other property and the
record book thereof, taking his receipt therefor. This
article shall not exempt any officer or his surety from
any liability on his official bond for any neglect or
other default in regard to said property.

Revisor's Note
(1) The revised law omits the source law
material referring to "script" since script is merely a
form of instrument. Since all instruments are written, the source law reference to an "instrument of writing" is also omitted.

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

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

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

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

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

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

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

[Sections 7.004-7.010 reserved for expansion]
SUBCHAPTER B. LIABILITY OF ATTORNEY

Revised Law

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

Source Law

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

[Sections 7.012-7.020 reserved for expansion]

SUBCHAPTER C. SUIT ON OFFICIAL BONDS

Revised Law

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

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

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

Source Law

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

[Chapters 8-14 reserved for expansion]
SUBTITLE B. TRIAL MATTERS

CHAPTER 15. VENUE

SUBCHAPTER A. GENERAL RULE; MANDATORY VENUE

Sec. 15.001. VENUE: GENERAL RULE
Sec. 15.002. LAND
Sec. 15.003. INJUNCTION AGAINST SUIT
Sec. 15.004. INJUNCTION AGAINST EXECUTION OF JUDGMENT
Sec. 15.005. HEAD OF STATE DEPARTMENT
Sec. 15.006. COUNTIES
Sec. 15.007. OTHER MANDATORY VENUE
Sec. 15.008. LIBEL, SLANDER, OR INVASION OF PRIVACY

[Sections 15.009-15.020 reserved for expansion]

SUBCHAPTER B. PERMISSIVE VENUE

Sec. 15.021. EXECUTOR; ADMINISTRATOR; GUARDIAN
Sec. 15.022. INSURANCE
Sec. 15.023. BREACH OF WARRANTY BY MANUFACTURER
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Sec. 15.025. CONTRACT IN WRITING
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Sec. 15.027. FOREIGN CORPORATIONS
Sec. 15.028. OTHER PERMISSIVE VENUE
Sec. 15.029. TRANSIENT PERSON
Sec. 15.030. NONRESIDENTS; RESIDENCE UNKNOWN

[Sections 15.031-15.050 reserved for expansion]

SUBCHAPTER C. SUITS BROUGHT IN JUSTICE COURT

Sec. 15.051. APPLICATION
Sec. 15.052. VENUE: GENERAL RULE
Sec. 15.053. RESIDENCE OF A SINGLE MAN
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[Sections 15.071-15.080 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS PROVISIONS
Sec. 15.081. JOINDER OF DEFENDANTS OR CLAIMS
Sec. 15.082. COUNTERCLAIMS, CROSS CLAIMS, AND THIRD-PARTY CLAIMS
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Sec. 15.084. HEARINGS
Sec. 15.085. WATERCOURSE OR ROADWAY FORMING COUNTY BOUNDARY

SUBTITLE B. TRIAL MATTERS
CHAPTER 15. VENUE
SUBCHAPTER A. GENERAL RULE; MANDATORY VENUE

Revised Law
Sec. 15.001. VENUE: GENERAL RULE. Except as otherwise provided by this subchapter or Subchapter B of this chapter, all lawsuits shall be brought in the county in which all or part of the cause of action accrued or in the county of defendant's residence if defendant is a natural person. (V.A.C.S. Art. 1995, Sec. 1.)
Art. 1995
Sec. 1. GENERAL RULE. All lawsuits, except as provided in Sections 2 and 3 of this article, shall be brought in the county where the cause of action or a part thereof accrued or in the county of defendant's residence if defendant is a natural person.

Sec. 15.002. LAND. Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property is located. (V.A.C.S. Art. 1995, Sec. 2(a).)

Sec. 2. MANDATORY VENUE. (a) Lands. Actions for recovery of real property or an estate or interest in real property, for partition of real property, or to remove encumbrances from the title to real property, or to quiet title to real property shall be brought in the county in which the property or a part of the property is located.

Sec. 15.003. INJUNCTION AGAINST SUIT. Actions to stay proceedings in a suit shall be brought in the county in which the suit is pending. (V.A.C.S. Art. 1995, Sec. 2(b).)

Sec. 15.004. INJUNCTION AGAINST EXECUTION OF JUDGMENT. Actions to restrain execution of a judgment based on invalidity of the judgment or of the writ shall be brought in the county in which the judgment was rendered. (V.A.C.S. Art. 1995, Sec. 2(c).)
(c) Injunctions against executions. Actions to restrain execution of a judgment based on invalidity of the judgment or of the writ shall be brought in the county in which the judgment was rendered.

Revised Law
Sec. 15.005. HEAD OF STATE DEPARTMENT. An action for mandamus against the head of a department of the state government shall be brought in Travis County. (V.A.C.S. Art. 1995, Sec. 2(d).)

(d) Against state or head of state department. An action for mandamus against the head of a department of the state government shall be brought in Travis County.

Revised Law
Sec. 15.006. COUNTIES. An action against a county shall be brought in that county. (V.A.C.S. Art. 1995, Sec. 2(e).)

(e) Against county. An action against a county shall be brought in that county.

Revised Law
Sec. 15.007. OTHER MANDATORY VENUE. An action governed by any other statute prescribing mandatory venue shall be brought in the county required by that statute. (V.A.C.S. Art. 1995, Sec. 2(f).)

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

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

[Sections 15.009-15.020 reserved for expansion]

SUBCHAPTER B. PERMISSIVE VENUE

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

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

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

Revised Law
Sec. 15.023. BREACH OF WARRANTY BY MANUFACTURER. A suit for breach of warranty by a manufacturer of consumer goods may be brought in any county in which all or a part of the cause of action accrued, in any county in which the manufacturer may have an agency.
or representative, in the county in which the principal office of
the company may be situated, or in the county in which the
plaintiff or plaintiffs reside. (V.A.C.S. Art. 1995, Sec. 3(c).)

Source Law

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

Revised Law

Sec. 15.024. RAILWAY PERSONAL INJURIES. A suit against a
railroad corporation or against any assignee, trustee, or receiver
operating any railway in this state for damages arising from
personal injuries, resulting in death or otherwise, shall be
brought either in the county in which the injury occurred or in the
county in which the plaintiff resided at the time of the injury.
If the defendant railroad corporation does not run or operate its
railway in or through the county in which the plaintiff resided at
the time of the injury and has no agent in that county, then the
suit shall be brought either in the county in which the injury
occurred, or in the county nearest that in which the plaintiff
resided at the time of the injury, in which the defendant
corporation runs or operates its road, or has an agent. When an
injury occurs within one-half mile of the boundary line dividing
two counties, suit may be brought in either of those counties. If
the plaintiff is a nonresident of this state, the suit shall be
brought in the county in which the injury occurred or in the county
in which the defendant railroad corporation has its principal
office. (V.A.C.S. Art. 1995, Sec. 3(d).)
(d) Railway personal injuries. Suits against railroad corporations or against any assignee, trustee, or receiver operating any railway in this state for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred or in the county in which the plaintiff resided at the time of the injury. If the defendant railroad corporation does not run or operate its railway in or through the county in which the plaintiff resided at the time of the injury and has no agent in said county, then said suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road, or has an agent. When an injury occurs within one-half mile of the boundary line dividing two counties, suit may be brought in either of said counties. If the plaintiff is a nonresident of this state then such suit shall be brought in the county in which the injury occurred or in the county in which the defendant railroad corporation has its principal office.

Sec. 15.025. CONTRACT IN WRITING. (a) Except as provided by Subsection (b) of this section, if a person has contracted in writing to perform an obligation in a particular county, expressly naming the county or a definite place in that county by that writing, suit on or by reason of the obligation may be brought against him either in that county or in the county in which the defendant has his domicile.

(b) In an action founded on a contractual obligation of the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use, suit by a creditor on or by reason of the obligation may be brought against the defendant either in the county in which the defendant in fact signed the contract or in the county in which the defendant resides when the action is commenced. No term or statement contained in an obligation described in this section shall constitute a waiver of these provisions. (V.A.C.S. Art. 1995, Sec. 3(e).)
(e) Contract in writing. (1) Subject to the provisions of Subdivision (2), if a person has contracted in writing to perform an obligation in a particular county, expressly naming such county or a definite place therein, by such writing, suit upon or by reason of such obligation may be brought against him either in such county or where the defendant has his domicile.

(2) In an action founded upon a contractual obligation of the defendant to pay money arising out of or based upon a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use, suit by a creditor upon or by reason of such obligation may be brought against the defendant either in the county in which the defendant in fact signed the contract or in the county in which the defendant resides at the time of the commencement of the action. No term or statement contained in an obligation described in this subsection shall constitute a waiver of these provisions.

Source Law

Revised Law

Sec. 15.026. CORPORATIONS AND ASSOCIATIONS. A suit against a private corporation, association, partnership, or joint-stock company may be brought in the county in which its principal office is situated, in the county in which all or a part of the cause of action arose, or in the county in which the plaintiff resided when all or a part of the cause of action arose, provided the corporation, association, partnership, or joint-stock company has an agency or representative in the county, or, if the corporation, association, partnership, or joint-stock company had no agency or representative in the county in which the plaintiff resided, when all or a part of the cause of action arose, then suit may be brought in the county nearest that in which plaintiff resided at that time in which the corporation, association, partnership, or joint-stock company then had an agency or representative. A suit against a railroad corporation or against any assignee, trustee, or receiver operating its railway may also be brought in any county through or into which the railroad of the corporation extends or is operated. A suit against a receiver of a person or a corporation may also be brought as otherwise provided by law. (V.A.C.S. Art. 68Cl85 RJA-D 21
Corporations and associations. Suits against a private corporation, association, partnership, or joint-stock company may be brought in the county in which its principal office is situated, or in the county in which the cause of action or part thereof arose, or in the county in which the plaintiff resided at the time the cause of action or part thereof arose, provided such corporation, association, partnership, or joint-stock company has an agency or representative in such county, or, if the corporation, association, partnership, or joint-stock company had no agency or representative in the county in which the plaintiff resided at the time the cause of action or part thereof arose, then suit may be brought in the county nearest that in which plaintiff resided at said time in which the corporation, association, partnership, or joint-stock company then had an agency or representative. Suits against a railroad corporation or against any assignee, trustee, or receiver operating its railway may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as otherwise provided by law.

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

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

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

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

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

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

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

[Sections 15.031-15.050 reserved for expansion]
SUBCHAPTER C. SUITS BROUGHT IN JUSTICE COURT

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

Source Law
Art. 2390. Every suit in the justice court shall be commenced . . .

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

Source Law
[Suits in justice court must be brought] in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law: . . .

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

Source Law
Art. 2391. The residence of a single man is where he boards.

Revised Law
Sec. 15.054. FORCIBLE ENTRY AND DETAINER. A suit for forcible entry and detainer shall be brought in the precinct in which all or part of the premises is located. (V.A.C.S. Art. 2390, Subdiv. 1.)
1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

Revised Law
Sec. 15.055. EXECUTOR; ADMINISTRATOR; GUARDIAN. A suit against an executor, an administrator, or a guardian shall be brought in the county in which the administration or guardianship is pending and in the precinct in which the county seat is located. (V.A.C.S. Art. 2390, Subdiv. 2.)

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

Revised Law
Sec. 15.056. COUNTIES. A suit against a county shall be brought in the precinct in which the county seat of that county is located. (V.A.C.S. Art. 2390, Subdiv. 3.)

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

Revised Law
Sec. 15.057. OPTION: SUIT IN DEFENDANT'S COUNTY OF RESIDENCE. A suit to which a permissive venue section of this subchapter applies may be brought and maintained either in the county provided for by that section or in the county in which the defendant resides. (V.A.C.S. Art. 2390 (part).)

In the following cases the suit may, at the
plaintiff's option, be brought either in the county and
precinct of the defendant's residence or in that
provided in each exception:

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

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

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

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

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

Source Law
9. Suits for the recovery of personal property
may be brought in any county and precinct in which the
property may be.

Revised Law
Sec. 15.061. RENTS. A suit to recover rents may be brought
in the county and precinct in which all or part of the rented
premises is located. (V.A.C.S. Art. 2390, Subdiv. 5.)

Source Law

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

Revised Law

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

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

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

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

Source Law

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

(b) Suits by creditors upon contracts for goods,
services, or loans, intended primarily for personal,
family, household, or agricultural use may only be
brought in the county and precinct in which the
contract was signed or in the county and precinct of
the defendant's residence, notwithstanding any
provision in the contract to the contrary.
Revised Law
Sec. 15.063. Torts. A tort suit for damages may be brought in the county and precinct in which the injury was inflicted. (V.A.C.S. Art. 2390, Subdiv. 6.)

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

Revised Law
Sec. 15.064. Corporation; Association; Joint-stock Company. A suit against a private corporation, association, or joint-stock company may be brought in the county and precinct in which:
(1) all or part of the cause of action arose;
(2) the corporation, association, or company has an agency or representative; or
(3) the principal office of the corporation, association, or company is located. (V.A.C.S. Art. 2390, Subdiv. 10.)

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

Revised Law
Sec. 15.065. Railroad Companies; Carriers. A suit against a railroad company, a canal company, or the owners of a line of transportation vehicles for injury to a person or property on the railroad, canal, or line of vehicles or for liability as a carrier may be brought in a precinct through which that railroad, canal, or line of vehicles passes, or in a precinct in which the route of that railroad, canal, or vehicle begins or ends. (V.A.C.S. Art.
2390, Subdiv. 11.)

Source Law

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

Revised Law

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

1. the steamboat or vessel may be found;
2. the cause of action arose; or
3. the liability accrued or was contracted.

(V.A.C.S. Art. 2390, Subdiv. 13 (part).)

Source Law

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

Revised Law

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

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

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

Revised Law

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

Source Law

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

Revisor's Note

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

Revised Law

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

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

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

[Sections 15.071-15.080 reserved for expansion]

Sec. 15.081. JOINDER OF DEFENDANTS OR CLAIMS. When two or more parties are joined as defendants in the same action or two or more claims or causes of action are properly joined in one action and the court has venue of an action or claim against any one defendant, the court also has venue of all claims or actions against all defendants unless one or more of the claims or causes of action is governed by one of the provisions of Subchapter A of this chapter requiring transfer of the claim or cause of action, on proper objection, to the mandatory county. (V.A.C.S. Art. 1995, Sec. 4(a).)
more claims or causes of action are properly joined in one action and the court has venue of an action or claim against any one defendant, the court also has venue of all claims or actions against all defendants unless one or more of the claims or causes of action is governed by one of the provisions of Section 2 of this article requiring transfer of such claim or cause of action, upon proper objection, to the mandatory county.

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

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

Revised Law
Sec. 15.083. TRANSFER. The court, on motion filed and served concurrently with or before the filing of the answer, shall transfer an action to another county of proper venue if:
(1) the county in which the action is pending is not a proper county as provided by this chapter;
(2) an impartial trial cannot be had in the county in which the action is pending; or
(3) written consent of the parties to transfer to any other county is filed at any time. (V.A.C.S. Art. 1995, Sec. 4(c).)

Source Law
(c) Transfer. The court, upon motion filed and served concurrently with or before the filing of the answer, shall transfer an action to another county of proper venue where:
(1) the county where the action is pending is
not a proper county as provided by this Act; or
(2) an impartial trial cannot be had in the county where the action is pending; or
(3) written consent of the parties to transfer to any other county is filed at any time.

Revised Law
Sec. 15.084. HEARINGS. (a) In all venue hearings, no factual proof concerning the merits of the case shall be required to establish venue. The court shall determine venue questions from the pleadings and affidavits. No interlocutory appeal shall lie from the determination.
(b) On appeal from the trial on the merits, if venue was improper it shall in no event be harmless error and shall be reversible error. In determining whether venue was or was not proper, the appellate court shall consider the entire record, including the trial on the merits. (V.A.C.S. Art. 1995, Sec. 4(d).)

Source Law
(d) Hearings. (1) In all venue hearings, no factual proof concerning the merits of the case shall be required to establish venue; the court shall determine venue questions from the pleadings and affidavits. No interlocutory appeal shall lie from such determination.
(2) On appeal from the trial on the merits, if venue was improper it shall in no event be harmless error and shall be reversible error. In determining whether venue was or was not proper the appellate court shall consider the entire record, including the trial on the merits.

Revised Law
Sec. 15.085. WATERCOURSE OR ROADWAY FORMING COUNTY BOUNDARY. If a river, watercourse, highway, road, or street forms the boundary line between two counties, the courts of each county have concurrent jurisdiction over the parts of the watercourse or roadway that form the boundary of the county in the same manner as if the watercourse or roadway were in that county. (V.A.C.S. Art. 1996.)
Art. 1996. Where any part of a river, water course, highway, road or street is the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county.
CHAPTER 16. LIMITATIONS

SUBCHAPTER A. LIMITATIONS OF PERSONAL ACTIONS

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[Sections 16.010-16.020 reserved for expansion]

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[Sections 16.038-16.050 reserved for expansion]

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Sec. 16.051. RESIDUAL LIMITATIONS PERIOD

[Sections 16.052-16.060 reserved for expansion]

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CHAPTER 16. LIMITATIONS

SUBCHAPTER A. LIMITATIONS OF PERSONAL ACTIONS

Revised Law

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

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

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

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

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

Source Law

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

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

Revisor's Note

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

(2) The revised law omits the superfluous source law material relating to suits brought after the removal of a disability, since the material merely states the result of the application of the rule
revised as Subsection (b).

Revised Law

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

Source Law

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

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.
2. Actions for damages for seduction, or breach of promise of marriage.

Revisor's Note

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

Revised Law

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

(b) A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person. (V.A.C.S. Art. 5526.)
Art. 5526. There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.
2. Actions for detaining the personal property of another, and for converting such property to one's own use.
3. Actions for taking or carrying away the goods and chattels of another.
4. Action for injury done to the person of another.
5. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured.
6. Actions of forcible entry and forcible detainer.

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

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

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

(c) A person must bring suit against his partner for a settlement of partnership accounts, and must bring an action on an open or stated account, or on a mutual and current account concerning the trade of merchandise between merchants or their agents or factors, not later than four years after the day that the cause of action accrues. For purposes of this subsection, the cause of action accrues on the day that the dealings in which the parties were interested together cease. (V.A.C.S. Arts. 5527,
Art. 5527. There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

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

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

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

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

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

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

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

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

Source Law

Art. 5526a
Sec. 1. In all cases where the governing body of 
any incorporated city or town has heretofore passed, or 
shall hereafter pass, an ordinance closing and 
abandoning, or attempting to close and abandon, any 
public street or alley, or any part thereof, other than 
a State highway, within such city or town, and in all 
cases where the commissioners' court of any county has 
heretofore passed, or shall hereafter pass, an order 
closing and abandoning, or attempting to close and 
abandon, any public road or thoroughfare, or any part 
thereof, other than a State highway, within such 
county, any person, firm, private corporation or public 
corporation having a cause of action (not already 
barred by existing limitation laws of this State at the 
time this Act takes effect) for the recovery of any 
kind of relief in the matter, whether damages or 
reopening or both, may bring suit upon such cause of 
action within the following time, to wit: (1) within 
two (2) years after the effective date of this Act in 
cases where the cause of action has accrued or shall 
accrue before such effective date and not thereafter; 
(2) within two (2) years after the passage of the 
on ordinance or order for closing and abandonment, and not 
thereafter, in cases where the cause of action shall 
accrue on or after the effective date of this Act.
Sec. 2. In all cases where suit is not brought 
within the time fixed by Section 1 hereof, the person, 
firm or corporation (public or private) having 
possession of the land in question shall thereupon 
become vested with a complete limitation title to same; 
and not only shall the causes of action mentioned in 
said Section 1 hereof be barred, but also the right of 
the city, town or county to revoke or rescind the 
on ordinance or order hereinbefore referred to shall be 
barred.

Revisor's Note

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

(2) The revised law omits the source law 
material that provides for suits to be brought within 
two years of the effective date of V.A.C.S. Article
1 5526a (March 7, 1934) because the two-year period has
2 expired.

3 Revised Law
4 Sec. 16.006. CARRIERS OF PROPERTY. (a) A carrier of
5 property for compensation or hire must bring suit for the recovery
6 of charges not later than three years after the day on which the
7 cause of action accrues.
8 (b) Except as provided by Subsections (c) and (d), a person
9 must bring suit for overcharges against a carrier of property for
10 compensation or hire not later than three years after the cause of
11 action accrues.
12 (c) If the person has presented a written claim for the
13 overcharges within the three-year period, the limitations period is
14 extended for six months from the date written notice is given by
15 the carrier to the claimant of disallowance of the claim in whole
16 or in part, as specified in the carrier's notice.
17 (d) If on or before the expiration of the three-year period,
18 the carrier brings an action under Subsection (a) to recover
19 charges relating to the service, or, without beginning an action,
20 collects charges relating to that service, the limitations period
21 is extended for 90 days from the day on which the action is begun
22 or the charges are collected.
23 (e) A cause of action regarding a shipment of property
24 accrues on the delivery or tender of the property by the carrier.
25 (f) In this section, "overcharge" means a charge for
26 transportation services in excess of the lawfully applicable
27 amount. (V.A.C.S. Art. 5526b.)

Source Law

Art. 5526b
Sec. 1. All actions at law by carriers of
property for compensation or hire for the recovery of
their charges, or any part thereof, shall be begun
within three years from the time the cause of action
accrues, and not after.
Sec. 2. For recovery of overcharges, action at law shall be begun against carriers of property for compensation or hire within three years from the time the cause of action accrues, and not after, subject to Section 3 of this Article, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

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

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

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

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

Revisor's Note

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

Revised Law

Sec. 16.007. RETURN OF EXECUTION. A person must bring suit against a sheriff or other officer, or the surety of the sheriff or officer, for failure to return an execution issued in the person's favor, not later than five years after the date on which the execution was returnable. (V.A.C.S. Art. 5533.)
Art. 5533. Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same, within five years from the day on which it was returnable, and not after.

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

(b) This section applies to suit for:
   (1) injury, damage, or loss to real or personal property;
   (2) personal injury;
   (3) wrongful death;
   (4) contribution; or
   (5) indemnity.

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

Art. 5536a
Sec. 1. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property or the commencement of operation of any equipment attached to real property,
and not afterward, all actions or suits in court for
damages for any injury, damages or loss to property,
real or personal, or for any injury to a person, or for
wrongful death, arising out of the defective or unsafe
condition of any such real property or any equipment or
improvement attached to such real property, for
contribution or indemnity for damages sustained on
account of such injury, damage, loss or death against
any registered or licensed engineer or architect in
this state performing or furnishing the design,
planning, inspection of construction of any such
improvement, equipment or structure or against any such
person so performing or furnishing such design,
planning, inspection of construction of any such
improvement, equipment, or structure; provided,
however, if the claim for damages, contribution or
indemnity has been presented in writing to the
registered or licensed engineer or architect performing
such services within the ten-year period of limitation,
said period shall be extended to include two years from
the time such notice in writing is presented.

Revised Law

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

(b) This section applies to suit for:

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

(2) personal injury;

(3) wrongful death;

(4) contribution; or

(5) indemnity.

(c) If the claimant presents a written claim for damages,
contribution, or indemnity to the person performing or furnishing
the construction or repair work during the 10-year limitations
period, the period is extended for two years from the date the
claim is presented.
(d) If the damage, injury, or death occurs during the 10th year of the limitations period, the claimant may bring suit not later than two years after the day the cause of action accrues.

(e) This section does not bar an action:

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

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

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

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

Source Law

Sec. 2. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property, and not afterward, all actions or suits in court for damages for any injury, damages, or loss to property, real or personal, or for any injury to a person, or for wrongful death, or for contribution or indemnity for damages sustained on account of such injury, damage, loss, or death arising out of the defective or unsafe condition of any such real property or any deficiency in the construction or repair of any improvements on such real property against any person performing or furnishing construction or repair of any such improvement; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the person performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented, or if said injury, damage, loss, or death occurs during the tenth year, all actions or suits in court may be brought within two years from the date of such injury, damage, loss, or death; and provided further, however, this section shall not apply and will not operate as a bar to an action or suit in court (a) on a written warranty, guaranty, or other contract which expressly is effective for a period in excess of the period herein prescribed; (b) against persons in actual possession or control of the real property as owner, tenant, or otherwise at the time the injury, damage, loss, or death occurs; or (c) based on wilful misconduct or fraudulent concealment in connection with the
performing or furnishing of such construction or repair. Nothing in this section shall be construed as extending or affecting the period prescribed for the bringing of any action under Articles 5526, 5527, and 5529, Revised Civil Statutes of Texas, 1925, or any other law of this state.

[Sections 16.010-16.020 reserved for expansion]

SUBCHAPTER B. LIMITATIONS OF REAL PROPERTY ACTIONS

Revised Law
Sec. 16.021. DEFINITIONS. In this subchapter:
(1) "Adverse possession" means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person.
(2) "Color of title" means a consecutive chain of transfers to the person in possession that:
   (A) is not regular because of a muniment that is not properly recorded or is only in writing or because of a similar defect that does not want of intrinsic fairness or honesty; or
   (B) is based on a certificate of headright, land warrant, or land scrip.
(3) "Peaceable possession" means possession of real property that is continuous and is not interrupted by an adverse suit to recover the property.
(4) "Title" means a regular chain of transfers of real property from or under the sovereignty of the soil. (V.A.C.S. Arts. 5508, 5514, 5515.)

Source Law
Art. 5508. By the term "title" is meant a regular chain of transfers from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfers down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or
when the party in possession shall hold the same by a certificate of headright, land warrant, or land scrip, with a chain of transfer down to him in possession.

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

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

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

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

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

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

(V.A.C.S. Art. 5518 (part).)

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

1. A person, including a married person, under twenty-one years of age, or
2. In time of war, a person in the military or naval service of the United States, or
3. A person of unsound mind, or
4. A person imprisoned, the time during which
such disability or status shall continue shall not be
deemed any portion of the time limited for the
commencement of such suit, or the making of such
defense; and such person shall have the same time after
the removal of his disability that is allowed to others
by the provisions of this title . . . .

Revisor's Note

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

Revised Law

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

Source Law

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

Revised Law

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

Source Law

Art. 5507. Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of
action accrued, and not afterward.

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

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

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

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

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

(b) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually
(c) Peaceable possession of real property held under a duly registered memorandum of title other than a deed that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument. (V.A.C.S. Art. 5510.)

Source Law

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

Revised Law

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

Source Law

... provided, that notwithstanding a person may be or may have been laboring under any of the disabilities mentioned in this Article, one having the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying same, shall institute his suit therefor within twenty-five years next after his cause of action shall have accrued and not thereafter.
Sec. 16.028. ADVERSE POSSESSION WITH RECORDED INSTRUMENT: 25-YEAR LIMITATIONS PERIOD. (a) A person, regardless of whether the person is or has been under a legal disability, may not maintain an action for the recovery of real property held for 25 years before the commencement of the action in peaceable and adverse possession by another who holds the property in good faith and under a deed or other instrument purporting to convey the property that is recorded in the deed records of the county where any part of the real property is located.

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

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

(V.A.C.S. Art. 5519.)

Art. 5519. No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real estate regardless of minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by
different persons successively there must be a privity of estate between them. The adverse possession of any part of such real estate shall extend to and be held to include all of the property described in such deed or instrument conveying or purporting to convey, under which entry was made upon such land or any part thereof, and by instrument purporting to convey shall be meant any instrument in the form of a deed or which contains language showing an intention to convey even though such instrument, for want of proper execution or for other cause is void on its face or in fact.

Revisor's Note
(1) The revised law omits the source law language on privity of estate. The privity of estate material is set forth in Section 16.023.
(2) The revised law omits the source law reference to "claim of right" because that is included in the definition of adverse possession under Section 16.021.

Revised Law
Sec. 16.029. EVIDENCE OF TITLE TO LAND BY LIMITATIONS. (a) In a suit involving title to real property that is not claimed by this state, it is prima facie evidence that the title to the property has passed from the person holding apparent record title to an opposing party if it is shown that:
(1) for one or more years during the 25 years preceding the filing of the suit the person holding apparent record title to the property did not exercise dominion over or pay taxes on the property; and
(2) during that period the opposing parties and those whose estate they own have openly exercised dominion over and have asserted a claim to the land, and have paid taxes on it annually before becoming delinquent for as long as 25 years.
(b) This section does not affect a statute of limitations, a right to prove title by circumstantial evidence under the case law of this state, or a suit between a trustee and a beneficiary of the
trust. (V.A.C.S. Art. 5519a.)

Source Law

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

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

Revisor's Note

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

Revised Law

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

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

Source Law

Art. 5513. Whenever an action for the recovery of real estate is barred by any provision of this title, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.
Art. 5517. The right of the State, all counties, incorporated cities and all school districts shall not be barred by any of the provisions of this Title, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, alley, sidewalk, or grounds which belong to any town, city, or county, or which have been donated or dedicated for public use to any such town, city, or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city, or county in this State.

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

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

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

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

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

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

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

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

or

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

Source Law

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

Revised Law

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

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

(2) lack of a corporate seal;

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

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

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

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

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

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

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

or

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

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

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

Source Law

Art. 5523a. Any person who has the right of action for the recovery of land because of any one or more of the following defects in any instrument, where it has not been signed by the proper officer of any corporation; or where the corporate seal of the corporation has not been impressed on such instrument; or where the record does not show such corporate seal; or because the record does not show authority therefor by the Board of Directors and Stockholders (or either of them) of a corporation; or where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been canceled, withdrawn or forfeited; or where the executor, administrator, guardian, assignee, receiver, Master in Chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity; or where such instrument is executed by a trustee without record of Judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited; or where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment; or where the notarial seal is not shown of record; or where the wording of the consideration may or might create an implied lien in favor of grantor (By this is not meant an express vendor's lien retained); shall institute his suit therefor not later than 10 years next after the date when such instrument has been or hereafter may be actually recorded in the office of the County Clerk of the county in which such real estate is situated and not afterwards; provided that such person, if not already barred by limitation or otherwise, shall
in case of instruments of record for nine years or more, prior to the effective date of this Act, have the right within one year after the effective date of this Act, to bring proceedings to contest the effect of such instrument but not afterward; and providing further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this State in which the validity of the making, execution or acknowledgment of any such instrument has been or may hereafter be drawn in question; and provided further, this Act is cumulative of all other laws on this subject and if any portion of this Act be declared unconstitutional the remaining portion shall not be affected thereby and shall remain in full force and effect. This Act shall not apply to forged instruments, and shall be subject to the provisions of Article 5518, Revised Civil Statutes of 1925.

Revisor's Note
(1) The revised law omits the reference to V.A.C.S. Article 5518 because the disability section, Section 16.022, applies to the entire subchapter.
(2) The revised law deletes the savings provision of the source law as unnecessary. The Code Construction Act (V.A.C.S. Article 5429b-2) includes a savings provision that preserves any remaining rights.
(3) The revised law omits the severability clause as unnecessary. Severability of statutes is provided by V.A.C.S. Article 11a and the Code Construction Act (V.A.C.S. Article 5429b-2).
(4) The revised law omits the source law material that provides for a suit to be brought within one year of the effective date of V.A.C.S. Article 5523a (March 12, 1929) because the one-year period has expired.
(5) The revised law omits the source law reference to the cumulative effect of Article 5523a as unnecessary because all statutes are cumulative in effect.
(6) The revised law omits the source law reference that excludes an expressly retained vendor's
lien from an implied lien because an implied lien by definition excludes an express lien.

Revised Law

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

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

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

Source Law

Art. 5523b

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

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

(b) In the written notice and demand to vacate the premises, the party seeking recovery of possession shall give notice that in the event the party unlawfully in possession has not vacated the premises
within 10 days and a claim is filed by the party seeking recovery of possession, judgment may be entered against the party unlawfully in possession for attorney's fees in an amount determined by the court to be reasonable, plus costs of suit.

Revised Law

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

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

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

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

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

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

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

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

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

(2) a vendor's lien, a mortgage, a deed of trust, a voluntary mechanic's lien, or a voluntary materialman's lien on real estate, securing a note or other written obligation.

(V.A.C.S. Art. 5520 (part); New.)

Source Law

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

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

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

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

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

Revisor's Note

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

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

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

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

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

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

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

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

Source Law
[Art. 5520]
.. . unless said lien is extended by written agreement of the party or parties primarily liable for the payment of the indebtedness, as provided by law . . . .

[Art. 5522]
When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such indebtedness as extended and filed for
record in the county clerk's office in the county in
which the land is situated, the lien shall continue and
be in force until four years after maturity of the
notes as provided in such extension, the same as in the
original contract and the lien shall so continue for
any succeeding or additional extension so made and
recorded. The date of maturity set forth in the deed
of conveyance or deed of trust or mortgage, or the
recorded renewal and extension of the same, shall be
conclusive evidence of the date of maturity of the
indebtedness therein mentioned.

Revised Law

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

Source Law

[Art. 5520]
... but any such extension agreement shall be a
nullity against aforesaid bona fide third persons
dealing with said property without actual notice
thereof and before same is filed and recorded in the
manner provided for the acknowledgment and record of
conveyances of real estate.

[Art. 5522]
Provided the owner of the land and the holder of the
note or notes may at any time enter into a valid
agreement renewing and extending the debt and lien, so
long as it does not prejudice the rights of lien
holders or purchasers subsequent to the date such liens
became barred of record under laws existing prior to
the taking effect of, or under this Act; as to all such
lien holders or purchasers any renewal or extension
executed or filed for record after the note or notes
and lien or liens were, or are, barred of record and
before the filing for record of such renewal or
extension, such renewal or extension shall be void.

Revisor's Note
(End of Subchapter)

The reference to "laws existing prior to
... this Act" refers to V.A.C.S. Article 5521. The
revised law omits the reference because that article
was repealed by Section 1, Chapter 136, Acts of the
42nd Legislature, Regular Session, 1931.

[Sections 16.038-16.050 reserved for expansion]

SUBCHAPTER C. RESIDUAL LIMITATIONS PERIOD

Revised Law

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

Source Law

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

[Sections 16.052-16.060 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Revised Law

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

Source Law

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

Revised Law

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

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

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

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

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

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

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

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

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

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

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

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

Revised Law

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

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

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

Source Law

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

Revisor's Note

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

Revised Law

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

(a) A person may not bring an action to recover a claim against a person who has moved to this state if the claim is barred by the
law of limitations of the state or country from which the person came.

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

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

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

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

Revised Law
Sec. 16.068. AMENDED AND SUPPLEMENTAL PLEADINGS. If a filed pleading relates to a cause of action, cross action, counterclaim, or defense that is not subject to a plea of limitation when the pleading is filed, a subsequent amendment or supplement to the pleading that changes the facts or grounds of liability or defense is not subject to a plea of limitation unless the amendment or supplement is wholly based on a new, distinct, or different transaction or occurrence. (V.A.C.S. Art. 5539b.)
Art. 5539b. Whenever any pleading is filed by any party to a suit embracing any cause of action, cross-action, counterclaim, or defense, and at the time of filing such pleading such cause of action, cross-action, counterclaim, or defense is not subject to a plea of limitation, no subsequent amendment or supplement changing any of the facts or grounds of liability or of defense shall be subject to a plea of limitation, provided such amendment or supplement is not wholly based upon and grows out of a new, distinct or different transaction and occurrence. Provided, however, when any such amendment or supplement is filed, if any new or different facts are alleged, upon application of the opposite party, the court may postpone or continue the case as justice may require.

Revisor's Note

The revised law omits the source law material relating to a court's discretion to postpone or continue a case as justice requires because a court is commonly acknowledged to have this discretion. See, e.g., Bray v. Miller, 397 S.W.2d 103 (Tex. Civ. App.--Dallas 1965, no writ).

Revised Law

Sec. 16.069. COUNTERCLAIM OR CROSS CLAIM. (a) If a counterclaim or cross claim arises out of the same transaction or occurrence that is the basis of an action, a party to the action may file the counterclaim or cross claim even though as a separate action it would be barred by limitation on the date the party's answer is required. (b) The counterclaim or cross claim must be filed not later than the 30th day after the date on which the party's answer is required. (V.A.C.S. Art. 5539c.)

Source Law

Art. 5539c. In the event a pleading asserting a cause of action is filed under circumstances where at the date when answer thereto is required by law a counterclaim or cross claim would otherwise be barred by the applicable statute of limitation, then the party so answering may, within 30 days following such answer...
date file a counterclaim or cross claim in such cause
and the period of limitation is hereby extended to
such period of time provided that the counterclaim or
cross claim arises out of the same transaction or
occurrence that is the subject matter of the opposing
party's claim.

Revised Law

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

Source Law

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

Revisor's Note

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

Revised Law

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

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

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

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

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

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

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

Source Law

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

(b) The provisions of Paragraph (a) shall apply
to contracts between Federal prime contractors and
their sub-contractors except that the notice
stipulation in such subcontracts may be for a period of not less than the notice requirement provided in the prime contract between the Federal Government and the prime contractor, less seven (7) days.

Revised Law

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

Source Law

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

Revisor's Note

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

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

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

Section 93, Probate Code, reads:

Sec. 93. Period for Contesting Probate. After a will has been admitted to probate, any interested person may institute suit in the proper court to
contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that persons non compos mentis and minors shall have two years after the removal of their respective disabilities within which to institute such contest.
CHAPTER 17. PARTIES; CITATION; LONG-ARM JURISDICTION

SUBCHAPTER A. PARTIES TO SUIT

Sec. 17.001. SUIT ON CONTRACT WITH SEVERAL OBLIGORS OR PARTIES CONDITIONALLY LIABLE

Sec. 17.002. SUIT AGAINST ESTATE FOR LAND TITLE

Sec. 17.003. SUIT AGAINST NONRESIDENT OR TRANSIENT PROPERTY OWNER

Sec. 17.004. SUIT AGAINST UNKNOWN HEIRS OR UNKNOWN STOCKHOLDERS OF DEFUNCT CORPORATION

Sec. 17.005. SUIT AGAINST UNKNOWN LANDOWNER

[Sections 17.006-17.020 reserved for expansion]

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[Sections 17.026-17.040 reserved for expansion]

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[Sections 17.070-17.090 reserved for expansion]

SUBCHAPTER E. CITATION OF NONRESIDENTS--MISCELLANEOUS PROVISIONS

Sec. 17.091. SUBSTITUTED SERVICE IN DELINQUENT TAX CASES

Sec. 17.092. SERVICE ON NONRESIDENT UTILITY SUPPLIER

Sec. 17.093. SERVICE ON FOREIGN RAILWAY

CHAPTER 17. PARTIES; CITATION; LONG-ARM JURISDICTION

SUBCHAPTER A. PARTIES TO SUIT

Revised Law

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

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

(1) is a nonresident or resides in a place where he cannot be reached by the ordinary process of law;
(2) resides in a place that is unknown and cannot be ascertained by the use of reasonable diligence;

(3) is dead; or

(4) is actually or notoriously insolvent. (V.A.C.S. Arts. 1986, 1987, 2088.)

### Source Law

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

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

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

### Revised Law

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

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

Source Law

Art. 1975. Persons claiming a right to or interest in property in this State may bring and prosecute to final decree, judgment or order, actions against non-residents of this State, or persons whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon.

Art. 1976. Such action as provided for in Article 1975, Title 42, Chapter 1, of the 1925 Revised Civil Statutes, of the State of Texas, may be maintained by any such person whether or not he is in actual possession of such property.

Revisor's Note

The revised law omits part of V.A.C.S. Article 1976 that relates to service of process in suits under V.A.C.S. Article 1975. The omitted provision was repealed by Rule 811, Texas Rules of Civil Procedure, and read:

Service on the defendant or defendants may be made by publication as is now or may be hereafter provided by law for publication of citation against such defendants, or by service of notice of the character and in the manner provided for by Articles 2037 and 2038, of Title 42, Chapter 3, of the 1925 Revised Civil Statutes, of the State of Texas.
Revised Law

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

Source Law

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

Revisor's Note

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

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

Revised Law

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

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

(2) the unknown owner or claimant:

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

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

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

(V.A.C.S. Art. 2041a, Sec. 1.)

Source Law

Art. 2041a
Sec. 1. When land in this State or any interest of any kind in land has been or may hereafter be conveyed, or any lease or contract with reference to land made by written instrument (a) to any person or persons as trustee or trustees and in the conveyance or instrument constituting source of title or claim of title the names of the persons taking or holding the equitable or beneficial title are not disclosed and are unknown, or (b) to any association, joint stock company or partnership, in an association, company or firm name, without disclosing the names of the members, shareholders or partners or persons owning interests in such association, company or firm, and such association, joint stock company or partnership shall thereafter be dissolved and the names of the persons holding or acquiring title to such lands after dissolution are not disclosed in such instrument and
are unknown; in each of such cases any person claiming
ownership of or any interest in such lands or having a
claim or cause of action against such unknown owners or
claimants relative to such property, may bring action
or actions against such unknown owners or claimants as
such. The provisions hereof shall apply to conveyances
made to all character and kinds of companies,
associations and organizations, and in which conveyance
the names and identity of the persons taking and
holding the beneficial or equitable title are not
disclosed and are unknown; provided, however, that if
the grantee in such conveyance is shown therein to be a
corporation or if the grantee be known to be a
corporation, in such event this Act shall not apply,
but the rights of action shall be governed by Article
2040 of Revised Civil Statutes; but if the character of
the organization as whether incorporated or
unincorporated is not shown in such conveyance and such
facts are unknown, then suit brought under the
provisions of this Act against the unknown owners or
claimants of property under such conveyance shall be
sufficient to give the Court jurisdiction over such
unknown owners or claimants regardless of whether the
named grantee is in fact a corporation or
unincorporated.

[Sections 17.006-17.020 reserved for expansion]

SUBCHAPTER B. CITATION GENERALLY

Revised Law

Sec. 17.021. SERVICE ON CERTAIN NONCORPORATE BUSINESS

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

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

(2) the individual, partnership, or association:

(A) is not a resident of the county;

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

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

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

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

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

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

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

Source Law

Art. 2033b. When an individual, partnership or unincorporated association (either being referred to herein as principal, whether one or more) has, for the transaction or doing of any business in Texas, an office, place of business, or agency in any county other than that in which the principal resides, service of citation or other civil process to bind any such principal, may be made on any agent or clerk employed in such office, place of business or agency, in all suits or actions growing out of or connected with such business and brought in the county in which such office, place of business or agency is located; and the provisions hereof shall apply as well to non-residents of the state as to non-residents of such county; and shall also apply to cases where a principal, though claiming or alleged to be a resident of the county wherein is located such office, place of business or agency, has not been found in such county for service on him of process in such suit, in which case, if the officer making return of the process unexecuted shall certify in such return that after diligent search and inquiry a principal cannot be found and served, then process in such suit to any succeeding term of court may be served on such clerk or agent as is herein provided for in case of non-residents of such county; but provided that nothing herein shall prevent or interfere with the application of the articles of the statutes relating to venue of suits.
Art. 2033c. Such service of process, made in the manner herein provided, shall have the same effect as if made personally on the principal and shall especially have effect to subject all non-exempt property in Texas of the principal so served to the jurisdiction and judgment of the court in such suit; but provided that no default judgment shall be rendered on service so obtained until after twenty days after the date of such service, and provided further that the method of service afforded by this Act shall be cumulative.

Revised Law

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

Source Law

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

Revisor's Note

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

Revised Law

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

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

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

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

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

Source Law

Art. 2029. In suits against any incorporated company or joint stock association, the citation may be served on the President, Vice President, Secretary, Cashier, Assistant Cashier, or Treasurer of such company or association, or upon the local agent of such company or association in the county where the suit is brought, or by leaving a copy of the same at the principal office of the company during office hours. If neither the President, Vice President, Secretary, Assistant Secretary, Cashier, Assistant Cashier, or Treasurer reside in the county in which suit is brought, and such company or association has no agent in the county, then the citation may be served upon any agent representing such company, corporation, or association in the State.

Revised Law

Sec. 17.024. SERVICE ON POLITICAL SUBDIVISION. (a) In a suit against a county, citation must be served on the county judge. (b) In a suit against an incorporated city, town, or village, citation may be served on the mayor, clerk, secretary, or treasurer. (c) In a suit against a school district, citation may be served on the president of the school board or on the superintendent. (V.A.C.S. Art. 2027; Art. 2028, Secs. 1, 2.)

Source Law

Art. 2027. In suits against a county, the citation shall be served on the county judge of such county. Art. 2028 Sec. 1. In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof. Sec. 2. In suits against a school district the citation may be served on the president of the school board or the superintendent.

Revised Law

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

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

(2) assess the expense of postage as costs.

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

Source Law

Art. 2041b. If a public official is required or permitted by law to serve any legal process by mail, including process in suits for delinquent taxes, the official may collect advance payment for the actual cost of the postage required to serve or deliver the process, or the official may assess the expense of postage as costs. The charges authorized by this Act are in addition to the fees allowed by law for other services performed by the official.

[Sections 17.026-17.040 reserved for expansion]

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

Revised Law

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

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

and

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

Revisor's Note

This definition is added as a drafting convenience and is derived from the listing used in the operative provisions of V.A.C.S. Article 2031b.
Revised Law

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

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

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

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

Source Law

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State.

Revisor's Note

The source law phrase, "without including other acts that may constitute doing business," is subject to two interpretations. At first reading, the phrase could be understood to exclude from the application of the long-arm statute acts other than those listed in the source law. That interpretation is rejected because it would obviously conflict with the purpose of the statute and the manner in which courts have applied the statute. It is well settled that the purpose of the source law is to extend in personam jurisdiction to

Each of those courts considered or emphasized the phrase and expressly or impliedly interpreted it as "catch-all language . . . intended to expand the jurisdictional scope of the statute to constitutional limits 'without including other acts' in the specific description of acts that fall within the purview of article 2031b." Thode, In Personam Jurisdiction; Article 2031b, The Texas "Long Arm" Jurisdiction Statute, 42 Texas L. Rev. 279, 308 (1964).

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

Source Law
Sec. 2. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State . . . .
Revised Law

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

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

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

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

(b) The secretary of state is an agent for service of process on a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party. (V.A.C.S. Art. 2031b, Secs. 1, 3, 6 (part).)

Source Law

Art. 2031b
Sec. 1. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person required by any Statute of this State to designate or maintain a resident agent, or any such corporation, association, joint stock company, partnership, or non-resident natural person subject to Section 3 of this Act, has not appointed or maintained a designated agent, upon whom service of process can be made, or has one or more resident agents and two (2) unsuccessful attempts have been made on different business days to serve process upon each of its designated agents, such corporation, association, joint stock company, partnership, or non-resident natural person shall be conclusively presumed to have designated the Secretary of State of Texas as their true and lawful attorney upon whom service of process or complaint may be made.

Sec. 3. Any foreign corporation, association,
joint stock company, partnership, or non-resident
natural person that engages in business in this State,
irrespective of any Statute or law respecting
designation or maintenance of resident agents, and does
not maintain a place of regular business in this State
or a designated agent upon whom service may be made
upon causes of action arising out of such business done
in this State, the act or acts of engaging in such
business within this State shall be deemed equivalent
to an appointment by such foreign corporation, joint
stock company, association, partnership, or
non-resident natural person of the Secretary of State
of Texas as agent upon whom service of process may be
made in any action, suit or proceedings arising out of
such business done in this State, wherein such
corporation, joint stock company, association,
partnership, or non-resident natural person is a party
or is to be made a party.

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

Revised Law

Sec. 17.045. NOTICE TO NONRESIDENT. (a) If the secretary
of state is served with duplicate copies of process for a
nonresident, he shall require a statement of the name and address
of the nonresident's home or home office and shall immediately mail
a copy of the process to the nonresident.
(b) If the secretary of state is served with process under Section 17.044(a)(3), he shall immediately mail a copy of the process to the nonresident (if an individual), to the person in charge of the nonresident's business, or to a corporate officer (if the nonresident is a corporation).

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

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

Source Law

[Sec. 2]
... provided a copy of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants principal place of business by registered mail, return receipt requested.

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

[Sec. 6]
... provided that the Secretary of State shall forward a copy of such service to the person in charge of such business or an officer of such company, or to such natural person by certified or registered mail, return receipt requested.

Revisor's Note
Although portions of the source law require notice to be sent by registered mail, V.A.C.S. Article 29c authorizes the use of certified mail whenever the law specifies registered mail. The revised law restates that rule in order to avoid any confusion.
Revisor's Note
(End of Subchapter)

The revised law omits Section 7 of V.A.C.S. Article 2031b as an unnecessary statement of cumulative effect. Statutes are cumulative unless otherwise provided, and all general law relating to service of process is codified in this chapter. Section 3.11, Code Construction Act (V.A.C.S. Article 5429b-2), saves any possible effect the omitted section may have. The omitted section reads:

Sec. 7. Nothing herein contained shall be construed as repealing any statute in force in this State in reference to service of process, but this Act shall be cumulative of all existing statutes.

[Sections 17.046-17.060 reserved for expansion]

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

Revised Law

Sec. 17.061. DEFINITIONS. In this subchapter:
(1) "Agent" includes a servant, employee, heir, legal representative, executor, administrator, or guardian.
(2) "Chairman" means the chairman of the State Highway and Public Transportation Commission.
(3) "Motor vehicle" includes a motorcycle. (New.)

Revisor's Note

The definitions provided by this section are added as a drafting convenience. The name of the State Highway Commission was changed to the State Highway and Public Transportation Commission by amendment to V.A.C.S. Article 6663.
Sec. 17.062. SUBSTITUTED SERVICE ON CHAIRMAN OF STATE HIGHWAY AND PUBLIC TRANSPORTATION COMMISSION. (a) The chairman of the State Highway and Public Transportation Commission is an agent for service of process on a person who is a nonresident or an agent of a nonresident in any suit against the person or agent that grows out of a collision or accident in which the person or his agent is involved while operating a motor vehicle in this state.

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

(V.A.C.S. Art. 2039a, Sec. 1 (part).)

Source Law

Art. 2039a
Sec. 1. The acceptance by a nonresident of this State or by a person who was a resident of this State at the time of the accrual of a cause of action but who subsequently removes therefrom, or the acceptance by his agent, servant, employee, heir, legal representative, executor, administrator or guardian of the rights, privileges and benefits extended by law to such persons of operating a motor vehicle or motorcycle or of having the same driven or operated within the State of Texas shall be deemed equivalent to an appointment by such nonresident and of his agent, servant, employee, heir, legal representative, executor, administrator or guardian, of the Chairman of the State Highway Commission of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, growing out of any accident, or collision in which said nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, may be involved while operating a motor vehicle or motorcycle within this State, either in person or by his agent, servant, employee, heir, legal representative, executor, administrator or guardian, and . . . .

Revisor's Note
The name of the State Highway Commission, which appears in the source law, has been changed to the State Highway and Public Transportation Commission.
Sec. 17.063. METHOD OF SERVICE; NOTICE TO NONRESIDENT. (a) A certified copy of the process must be served on the chairman not later than the 20th day prior to the date of return stated in the process.

(b) Immediately after being served, the chairman by properly addressed letter shall mail to the nonresident or agent:
   (1) a copy of the process; and
   (2) notice that the process has been served on the chairman.

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

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

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

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

... the presumption shall obtain, unless rebutted,
that such process was transmitted by the Chairman of the State Highway Commission and received by the defendant after being deposited in the mail by the Chairman of the State Highway Commission.

Revisor's Note

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

Revised Law

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

Source Law

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

Revised Law

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

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

(1) state when it was served;
(2) state on whom it was served; and
(3) be signed and sworn to by the party making the
service before a person authorized by law to make an affidavit
under his hand and seal.
(c) The process and notice may be served by any
disinterested person competent to make an oath that the process and
notice were served. (V.A.C.S. Art. 2039a, Sec. 2 (part).)

Source Law
If and in the event notice of service of the process
upon the Chairman of the State Highway Commission
cannot be effected by registered mail or if the person
to whom it is addressed refuses to accept or receive
the same, then the plaintiff may cause the defendant to
be served with a notice of the fact that the process
has been served upon the Chairman of the State Highway
Commission, stating the date of the service thereof,
which notice shall also be accompanied with a certified
copy of the process so served upon said Chairman of the
State Highway Commission. Such notice may be served by
any disinterested person competent to make oath of the
fact by delivering to the person to be served in person
a true copy of such notice, together with a certified
copy of the process served upon the Chairman of the
State Highway Commission. The return of service in
such case shall be endorsed on or attached to the
original notice stating when it was served and upon
whom it was served and it shall be signed and sworn to
by the party making such service before any person
authorized by the Statutes of this State to make
affidavit under the hand and official seal of such
officer.

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

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

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Sec. 3. The officer serving such process upon the Chairman of the State Highway Commission, shall in his return state the day and hour of the service upon the Chairman of the State Highway Commission of such process and such other facts as are now required to be made in his return as in the case of service of citations generally.

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

Sec. 5. No judgment by default shall be taken in any such cause or action, suit or proceeding, until after the expiration of at least twenty days after such process shall have been served upon the Chairman of the State Highway Commission as herein provided, and . . . .

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

Sec. 6. The court in which the action or proceeding is pending shall have the right to continue or postpone said action or proceeding, as may be necessary to afford the defendant reasonable opportunity to defend the action.

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

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

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

Source Law

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

[Sections 17.070-17.090 reserved for expansion]

SUBCHAPTER E. CITATION OF NONRESIDENTS--MISCELLANEOUS PROVISIONS

Revised Law

Sec. 17.091. SUBSTITUTED SERVICE IN DELINQUENT TAX CASES.

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

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

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

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

Source Law

Art. 2039b

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

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

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

(1) The revised law omits the definition of nonresident because it is made unnecessary by the use of "person" in Subsection (a). "Person" is defined in the Code Construction Act (V.A.C.S. Article 5429b-2) to include each of the entities listed in the source law definition of "nonresidents."

(2) The revised law omits Section 4 of V.A.C.S. Article 2039b, a severability clause made unnecessary by V.A.C.S. Article 11a and Section 3.12, Code Construction Act (V.A.C.S. Article 5429b-2), providing for the severability of all statutes.

Revised Law

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

Source Law

Art. 2033a. In suits against individuals and partnerships engaging in supplying gas, water, electricity or other public utility service to villages, towns, or cities in Texas, where such individuals or members of such partnerships reside out of the State of Texas, citation may be served upon the local agent, representative, superintendent or person in charge of the business of such individuals or partnerships.

Revised Law

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

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

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

(2) an agent who:

(A) has an office in this state; and

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

Source Law

Art. 2032. Service may also be had on foreign railway corporations by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations where one is a foreign railway corporation, and the other a domestic corporation, if said conductor handles and operates trains over such foreign and domestic corporation's tracks across the State line of Texas and on the track of the domestic corporation within this State or upon any agent who has an office in Texas who sells tickets or makes contracts for the transportation of passengers or property over any line of railway, or part thereof, of such foreign railway corporation or company. Conductors who are engaged in handling trains and employed by a foreign railway corporation and a domestic corporation, and who operate such trains across the State line of Texas, and agents engaged in selling tickets or making contracts for the transportation of property, are hereby designated as agents of such foreign corporation or companies upon whom service of citation may be had.

Revisor's Note

(End of Chapter)

(1) The revised law omits V.A.C.S. Article 2286a as executed. That article validated certain proceedings instituted prior to its enactment in which the citation or another notice was improperly directed, and has no continuing effect. The omitted article
Art. 2286a
Sec. 1. All citations and notices in all cases of lunacy, guardianship, or estates of decedents, or of any other probate proceedings directed to the sheriff or any constable of the county in which the proceedings were instituted instead of to any sheriff or constable within the State of Texas as provided in Rule 15 of the Rules of Civil Procedure, which have been duly served and returned in the manner provided by law by the sheriff or constable within the county in which the proceedings were instituted, together with all uncontested orders, decrees, sales, leases and judgments grounded on such citations or notices are hereby validated and made as effective to support proceedings in the respective county courts in lunacy, guardianship and probate as if directed to any sheriff or constable within the State of Texas, as provided in said Rule 15.

Sec. 2. In all cases where personal service is required in lunacy, guardianship, or estates of decedents, or any other probate proceedings where any citation or notice therein has been directed to the sheriff or constable of the county in which the person named in the citation or notice was located instead of to any sheriff or constable within the State of Texas as provided in Rule 15 of the Rules of Civil Procedure, and such citations or notices have been duly served on the person named therein by the sheriff or constable of the county in which the person named in the citation or notice was located, together with all uncontested orders, decrees, sales, leases and judgments grounded on such citations or notices are hereby validated and made as effective to support proceedings in the respective county courts in lunacy, guardianship and probate as if directed to any sheriff or constable in the State of Texas, as provided in said Rule 15.

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

(2) The revised law omits V.A.C.S. Article 2090 as repealed by Rule 163, Texas Rules of Civil Procedure. The order of the Supreme Court effective January 1, 1955, corrected the list of statutes repealed by the rules to read "[Articles] 2089-2091" instead of the original "[Articles] 2089, 2091."
CHAPTER 18. EVIDENCE

SUBCHAPTER A. DOCUMENTARY EVIDENCE

Sec. 18.001. AFFIDAVIT CONCERNING COST AND NECESSITY OF SERVICES

[Sections 18.002-18.030 reserved for expansion]

SUBCHAPTER B. PRESUMPTIONS

Sec. 18.031. FOREIGN INTEREST RATE

CHAPTER 18. EVIDENCE

SUBCHAPTER A. DOCUMENTARY EVIDENCE

Revised Law

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

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

(c) The affidavit must:

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

(2) be made by:

(A) the person who provided the service; or

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

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

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

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

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

Source Law

Art. 3737h
Sec. 1. (a) In a civil action other than an action on sworn account, the amount charged for services by a person or institution, when supported by affidavit that the charges reflected in the affidavit were reasonable at the time and place that the services were rendered and that the services were necessary, is sufficient evidence to support a finding of fact by judge or jury that the services were necessary or that the amount charged was reasonable, or both. The affidavit shall be taken before an officer authorized to administer oaths, shall be made by a person who rendered the services or who is in charge of records that show the services rendered and the charges made, and shall include an itemized statement of the services and the charges.

(b) As a condition precedent to applicability of Subsection (a) of this Section 1, the party asserting such applicability, or such party's attorney of record, shall file the affidavit provided for in said Subsection (a) with the clerk of the court and shall serve a copy thereof on each other party to the cause, or such other party's attorney of record, at least 14 days prior to the day on which presentation of evidence at trial of the cause commences. As a condition precedent to controverting a claim covered by an affidavit so filed and served, any party intending to controvert all or part of any such claim shall, within 10 days after receipt of such party's copy of such affidavit, or with leave of court first had and obtained at any time prior to commencement of evidence at trial of the cause, file a counter-affidavit with
the clerk of the court and serve a copy thereof on each
other party to the cause, or such other party's
attorney of record. The counter-affidavit shall give
reasonable notice of the basis upon which the party
filing it intends at trial to controvert all or part of
the claim covered by the initial affidavit. The
counter-affidavit shall be taken before a person
authorized to administer oaths and may be made upon
information and belief by the party filing it, or such
party's attorney of record. When a counter-affidavit
is so filed and served, then Subsection (a) of this
Section 1 shall thereafter have no force or effect at
the trial of the cause.
Sec. 2. This Act does not apply to civil actions
in which judgment was rendered prior to the effective
date of this Act, nor to attorney fees charged in the
trial of the cause or preparation thereof.

Revisor's Note

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

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

[Sections 18.002-18.030 reserved for expansion]

SUBCHAPTER B. PRESUMPTIONS

Revised Law

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

Source Law

Art. 3733. The rate of interest in any other
State, territory or country is presumed to be the same
as that established by law in this State, and may be
recovered accordingly without allegation or proof
thereof, unless the rate of interest in such other
country be alleged and proved.
Revisor's Note

The word "territory" is omitted from the revised law as included in the Code Construction Act (V.A.C.S. Article 5429b-2) definition of "state."
CHAPTER 19. LOST RECORDS

Sec. 19.001. APPLICATION OF CHAPTER

Sec. 19.002. PAROL PROOF

Sec. 19.003. APPLICATION FOR RELIEF

Sec. 19.004. CITATION

Sec. 19.005. ORDER

Sec. 19.006. EFFECT OF ORDER

Sec. 19.007. METHOD NOT EXCLUSIVE

Sec. 19.008. RERECORDATION OF ORIGINAL DOCUMENT

Sec. 19.009. CERTIFIED COPY

Revised Law

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

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

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

Source Law

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

Revisor's Note

Contrary to its apparent meaning, V.A.C.S. Article 6582 does not apply to lost originals. Douglas v. Baker, 15 S.W. 801 (Tex. 1891). For that reason, the revised law, unlike the source law, refers to a
lost, destroyed, or removed record of those documents rather than to a lost, destroyed, or removed original.

Revised Law

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

Source Law

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

Revised Law

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

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

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

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

Source Law

Art. 6583. Any person having any interest in any such deed, instrument in writing, or any judgment, or order or decree in the district court, the record or entry of which has been lost, destroyed, or carried away may . . . file with the district clerk of the
county where such loss or destruction took place, his
written application setting forth the facts entitling
him to the relief sought . . . .

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

Revisor's Note
Because a deed is a written instrument, the
revised law omits the reference to deeds.

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

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

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

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

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

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

Source Law
[Art. 6583]
... whereupon such clerk shall issue a citation to
the grantor in such deed, or to the party or parties
interested in such instrument, or to the party or
parties who were or may be interested adversely to the
applicant at the time of the rendition of any such
judgment, or the heirs and legal representatives of
such parties to appear at a term of the district court
to be designated in said citation, and contest the right of the applicant to have such deed, writing, or judgment substituted and recorded. Service shall be as provided for process in other cases.

[Art. 6585]

... when the same proceedings shall be had . . . .

Revisor's Note

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

Revised Law

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

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

Source Law

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

[Art. 6585]

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

Revised Law

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

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

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

(3) if recorded, may be used as evidence in a court of

the state as though it were the original record; and

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

including:

(A) preserving liens from the date of the

original record; and

(B) giving parties the right to issue execution

under the order as under the original record. (V.A.C.S. Arts.

6586, 6589.)

Source Law

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

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

Revised Law

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

Source Law

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

Sec. 19.008. RERECORDATION OF ORIGINAL DOCUMENT.

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

Source Law

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

Revised Law

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

Source Law

Art. 6587. All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established.
Sec. 20.001. PERSONS WHO MAY TAKE A DEPOSITION.

(a) A deposition of a witness who is alleged to reside or to be in this state may be taken by:

(1) a clerk of a district court;
(2) a judge or clerk of a county court; or
(3) a notary public.

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

(1) a clerk of a court of record having a seal;
(2) a commissioner of deeds appointed under the laws of this state; or
(3) a notary public.

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

(1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the deposition is taken;
(2) a consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the deposition is taken; or
(3) a notary public.

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

Source Law

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

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

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

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

4. If the witness is alleged to be a member of the Armed Forces of the United States or of the Auxiliaries thereof or a civilian employed by or accompanying any such Forces or Auxiliaries, without the territorial confines of the forty-eight states and the District of Columbia of the United States of America, such commission may be addressed to any commissioned officer in the Armed Forces of the United States of America, in the Auxiliaries thereto, or to any commissioned officer in the Armed Force Reserve of the United States of America or any Auxiliary thereto. When any deposition appears on its face to have been taken in compliance with the provisions of this Section and when such deposition, or any part thereof, is offered in evidence, it shall be presumed, in the
absence of pleading and proof to the contrary, that the
person taking such deposition as a commissioned officer
was such on the date on which the deposition was taken
and that the witness whose deposition was taken was one
of those with respect to whom such action is hereby
authorized.

Revisor's Note

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

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

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

Revised Law

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

Source Law

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

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

Revisor's Note
(1) The revised law omits the reference to
territories and districts because they are included in
the definition of "state" in the Code Construction Act
(V.A.C.S. Article 5429b-2).
(2) Interrogatories are referred to as questions
to conform with the usage of the Texas Rules of Civil
Procedure.

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

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

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

Revisor's Note
The words "written questions" are used instead of
"interrogatories" to conform with the usage of the
Texas Rules of Civil Procedure.

Revisor's Note
(End of Chapter)

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

The omitted article reads:

Art. 3769b. Whenever any commission for the taking of the deposition of any witness or party to any civil suit pending in any of the courts of Texas shall have been regularly and legally issued and placed in the hands of a person legally designated and qualified to take depositions under the laws of this state such officer shall have authority to issue any writ authorized by law to compel the attendance of a witness in court, and upon disobedience of such writ by any such witness he may be punished as for contempt either by the court out of which such commission issued, or by the Judge of any District Court of the County in which such witness resides.
CHAPTER 21. INTERPRETERS

SUBCHAPTER A. INTERPRETERS FOR THE DEAF

Sec. 21.001. DEFINITION

Sec. 21.002. INTERPRETERS FOR DEAF PERSONS

Sec. 21.003. QUALIFICATIONS

Sec. 21.004. INTERPRETER'S POSITION IN COURT

Sec. 21.005. OATH

Sec. 21.006. FEES AND TRAVEL EXPENSES

Sec. 21.007. RECORDING OF TESTIMONY

Sec. 21.008. PRIVILEGE OF INTERPRETER FOR THE DEAF

[Sections 21.009-21.020 reserved for expansion]

SUBCHAPTER B. SPANISH LANGUAGE INTERPRETERS IN CERTAIN BORDER COUNTIES

Sec. 21.021. APPLICATION

Sec. 21.022. APPOINTMENT

Sec. 21.023. INTERPRETER'S QUALIFICATIONS

[Sections 21.024-21.030 reserved for expansion]

SUBCHAPTER C. INTERPRETERS FOR COUNTY COURTS AT LAW

Sec. 21.031. APPOINTMENT; TERMINATION OF EMPLOYMENT; DUTIES

Sec. 21.032. OATH

CHAPTER 21. INTERPRETERS

SUBCHAPTER A. INTERPRETERS FOR THE DEAF

Revised Law

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

Source Law

In this Act, "deaf person" means a person who has a hearing impairment, regardless of whether the person
also has a speech impairment, that inhibits the
person's comprehension of the proceedings or
communication with others.

Revised Law
Sec. 21.002. INTERPRETERS FOR DEAF PERSONS. (a) In a civil
case or in a deposition, a deaf person who is a party or witness is
entitled to have the proceedings interpreted by a court-appointed
interpreter.
(b) The proceedings must be interpreted in a language,
including sign language, that the deaf person can understand.
(V.A.C.S. Art. 3712a, Sec. (a) (part).)

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

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

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

Revised Law
Sec. 21.004. INTERPRETER'S POSITION IN COURT. If a court is
required to appoint an interpreter under this subchapter, the court
may not start proceedings until the appointed interpreter is in a
position not more than 10 feet from and in full view of the deaf
person. (V.A.C.S. Art. 3712a, Sec. (b).)
(b) In any case where an interpreter is required to be appointed by the court under this Act, the court shall not commence proceedings until the appointed interpreter is in court in a position not exceeding 10 feet from and in full view of the deaf person.

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

1. make a true interpretation to the deaf person of the case proceedings in a language that the deaf person understands; and
2. repeat the deaf person's answers to questions to counsel, court, or jury in the English language, using the interpreter's best skill and judgment. (V.A.C.S. Art. 3712a, Sec. (c) (part).)

(c) The interpreter appointed under the terms of this Act shall be required to take an oath that he will make a true interpretation to the deaf person of all the proceedings of the case in a language that he understands; and that he will repeat the deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

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

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

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

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

Revised Law
Sec. 21.007. RECORDING OF TESTIMONY. (a) On the court's motion or a party's motion, the court may order a video recording of a deaf witness's testimony and the interpreter's interpretation of that testimony to use in verifying the transcription of the reporter's notes.
(b) If a party requests, the clerk of the court shall include the recording in the appellate record. (V.A.C.S. Art. 3712a, Sec. (e).)

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

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

[Sections 21.009-21.020 reserved for expansion]

SUBCHAPTER B. SPANISH LANGUAGE INTERPRETERS IN CERTAIN BORDER COUNTIES

Revised Law

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

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

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

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

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

Source Law

Art. 3737d-l

Sec. 1. In any county, which is a part of two (2) or more Judicial Districts and in which there are two (2) or more District Courts, having regular terms, one (1) county of said district bordering on the International Boundary between the United States and the Republic of Mexico, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, which said county forms a part of a
Judicial District composed of four (4) counties, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, and which county has three (3) or more District Courts or Judicial Districts wholly within said county, or in any county bordering on the Gulf of Mexico, and which said county has four (4) or more District Courts or Judicial Districts of which two (2) or more are wholly within said county. . . . (The commissioners court shall appoint a court interpreter.)

Revised Law

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

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

Source Law

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

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

Revised Law

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

Source Law

. . . that such interpreters shall be well versed in and competent to speak the Spanish language, as well as the English language . . . .
Revisor's Note
(End of Subchapter)

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

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

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

[Sections 21.024-21.030 reserved for expansion]

SUBCHAPTER C. INTERPRETERS FOR COUNTY COURTS AT LAW

Revised Law

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

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

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

Source Law

Art. 1970-325
Sec. 1. The judge of the County Court at Law of any county having a County Court at Law, is authorized to appoint an official interpreter for such County Court at Law. And the County Commissioners shall . . . prescribe the duties of such official interpreter.

Sec. 2. The judge of the County Court at Law shall have authority to terminate such employment of such interpreter at any time.
The revised law omits the following language relating to interpreters' salaries in V.A.C.S. Article 1970-325, Sec. 1:

And the County Commissioners shall by resolution fix the salary of said official interpreter and provide for the payment of such salary.

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

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

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

SUBCHAPTER A. WITNESSES

Sec. 22.001. WITNESS FEES

[Sections 22.002-22.010 reserved for expansion]

SUBCHAPTER B. PRIVILEGES

Sec. 22.011. PRIVILEGE FROM ARREST

CHAPTER 22. WITNESSES

SUBCHAPTER A. WITNESSES

Revised Law

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

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

and

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

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

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

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

Source Law

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

[Sections 22.002-22.010 reserved for expansion]
SUBCHAPTER B. PRIVILEGES

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

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

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

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

[Chapters 23-29 reserved for expansion]
CHAPTER 30. MISCELLANEOUS PROVISIONS

Sec. 30.001. INSTRUMENT TO WAIVE SERVICE OR CONFESS JUDGMENT

In an instrument executed before suit is brought, a person may not accept service and waive process, enter an appearance in open court, or confess a judgment. (V.A.C.S. Art. 2224.)

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

Revisor's Note
The revised law omits the source law reference to the contract or writing sued on because the word "instrument" includes contracts and writings.

Revised Law
Sec. 30.002. EXPIRATION OF JUDGE'S TERM; DEATH OF JUDGE.
(a) If a district or county judge's term of office expires before the adjournment of the court term at which a case may be tried or during the period prescribed for filing a statement of facts and a bill of exceptions or findings of fact and conclusions of law, the judge may approve the statement of facts and bill of exceptions or file findings of fact and conclusions of law in the case.
(b) If a district or county judge dies before he approves
the statement of facts and bill of exceptions or files findings of
fact and conclusions of law in a case pending at his death, they
may be approved or filed by the judge's successor as provided by
Rule 18, Texas Rules of Civil Procedure. (V.A.C.S. Art. 2248.)

Source Law

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

Reviser's Note

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

Revised Law

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

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

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

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

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

(f) The continuance provided by Subsection (b) is one of right and may not be charged against the party receiving it on any subsequent application for continuance. (V.A.C.S. Art. 2168a.)
the provisions of this Section shall be deemed mandatory and not discretionary. Notwithstanding the foregoing, the right to such continuance, where such continuance is based upon an attorney in such cause being a member of the Legislature, shall be discretionary with the Court in the following situations and under the following circumstances, and none other, to wit:

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

Revisor's Note
(End of Chapter)

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

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

Sec. 31.001. PASSAGE OF TITLE

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

Sec. 31.002. COLLECTION OF JUDGMENT THROUGH COURT PROCEEDING

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

(1) cannot readily be attached or levied on by...
ordinary legal process; and

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

(b) The court may:

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

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

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

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

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

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

Source Law

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

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

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

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

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

Revised Law

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

Source Law

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

Revised Law

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

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

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

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amount in controversy.

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

**Source Law**

Art. 2226a
Sec. 1. A determination of fact or law or a judgment in any proceeding in the Small Claims Court, Justice of the Peace Court, County Court, County Civil Court at Law, County Criminal Court at Law, or County Court at Law shall not be res judicata and shall not constitute a basis for estoppel by judgment in any proceeding in a District Court, except that any such judgment shall be binding on the parties thereto as to the recovery or denial thereof rendered in that particular case, and further except that all judgments in probate, guardianship, lunacy and other matters over which said inferior courts shall have exclusive jurisdiction of the subject matter, on a basis other than the amount in controversy, shall not be affected thereby.

**Revisor's Note**
The revised law replaces the source law reference to a county civil court at law, a county criminal court at law, or a county court at law with the term "statutory county court," which includes each of those county courts at law. The courts, omitted by name, are created under the legislative authority granted in Article V, Section 1, of the Texas Constitution.

**Revised Law**

Sec. 31.005. EFFECT OF ADJUDICATION IN SMALL CLAIMS OR JUSTICE OF THE PEACE COURT. A judgment or a determination of fact or law in a proceeding in small claims court or justice of the peace court is not res judicata and does not constitute a basis for estoppel by judgment in a proceeding in a county court or statutory county court, except that the judgment rendered is binding on the parties as to recovery or denial of recovery. (V.A.C.S. Art. 2226a, Sec. 2.)
Sec. 2. A determination of fact or law or a judgment in any proceeding in the Small Claims Court or Justice of the Peace Court shall not be res judicata and shall not constitute a basis for estoppel by judgment in any proceeding in a County Court, County Civil Court at Law, County Criminal Court at Law or County Court at Law, except that any such judgment shall be binding on the parties thereto as to the recovery or denial thereof rendered in that particular case.

Revisor's Note

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

Revised Law

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

Source Law

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

Revisor's Note

(End of Chapter)

(1) The revised law omits V.A.C.S. Article 2218a relating to the enforcement of deficiency judgments. The article was declared unconstitutional by the Texas Supreme Court in Langever v. Miller, 76 S.W.2d 1025
(2) The revised law omits V.A.C.S. Article 2218b, which expired under its own terms on May 1, 1934.
CHAPTER 32. CONTRIBUTION

Sec. 32.001. APPLICATION

(a) This chapter applies only to tort actions.

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

Sec. 32.002. RIGHT OF ACTION

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

Sec. 32.003. RECOVERY

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

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

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

Source Law

... and may recover from each a sum equal to the proportion of all of the defendants named in said judgment rendered to the whole amount of said judgment. If any of said persons co-defendant be insolvent, then recovery may be had in proportion as such defendant or defendants are not insolvent; and the right of recovery over against such insolvent defendant or defendants in judgment shall exist in favor of each defendant in judgment in proportion as he has been caused to pay by reason of such insolvency.
CHAPTER 33. COMPARATIVE NEGLIGENCE

SUBCHAPTER A. COMPARATIVE NEGLIGENCE

Sec. 33.001. COMPARATIVE NEGLIGENCE
[Sections 33.002-33.010 reserved for expansion]

SUBCHAPTER B. CONTRIBUTION

Sec. 33.011. DEFINITIONS

Sec. 33.012. DAMAGES IN PROPORTION

Sec. 33.013. DEFENDANT JOINTLY AND SEVERALLY LIABLE

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

Sec. 33.015. SETTLEMENT: TORT-FEASOR PARTY DEFENDANT

Sec. 33.016. CREDIT TOWARD LIABILITY

Sec. 33.017. CLAIMS DETERMINED IN PRIMARY SUIT

CHAPTER 33. COMPARATIVE NEGLIGENCE

SUBCHAPTER A. COMPARATIVE NEGLIGENCE

Revised Law

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

(b) Damages allowed are diminished in proportion to the amount of negligence attributed to the person recovering.

(V.A.C.S. Art. 2212a, Sec. 1.)

Source Law

Art. 2212a
Sec. 1. Contributory negligence shall not bar recovery in an action by any person or party or the legal representative of any person or party to recover damages for negligence resulting in death or injury to persons or property if such negligence is not greater than the negligence of the person or party or persons or parties against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person or party recovering.

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Revisor's Note

The words "party" and "legal representative of any person or party" are omitted because they are included in the Code Construction Act (V.A.C.S. Article 5429b-2) definition of "person."

[Sections 33.002-33.010 reserved for expansion]

SUBCHAPTER B. CONTRIBUTION

Revised Law
Sec. 33.011. DEFINITIONS. In this subchapter:
 mass. (1) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant.
 mass. (2) "Defendant" includes any party from whom a claimant seeks relief. (V.A.C.S. Art. 2212a, Sec. 2(a).)

Source Law
Sec. 2. (a) In this section:
 mass. (1) "Claimant" means any party seeking relief, whether he is a plaintiff, counterclaimant, or cross-claimant.
 mass. (2) "Defendant" includes any party from whom a claimant seeks relief.

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

Source Law
(b) In a case in which there is more than one defendant, and the claimant's negligence does not exceed the total negligence of all defendants, contribution to the damages awarded to the claimant shall be in proportion to the percentage of negligence attributable to each defendant.
Sec. 33.013. DEFENDANT JOINTLY AND SEVERALLY LIABLE. Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment that represents the percentage of negligence attributable to him. (V.A.C.S. Art. 2212a, Sec. 2(c).)

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

Revised Law

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

Source Law

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

Revised Law

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

Source Law

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

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

Source Law

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

Revisor's Note

(End of Chapter)

Section 2(h) of V.A.C.S. Article 2212a, which states that that section prevails over V.A.C.S. Article 2212 and all other laws to the extent of any conflict, is omitted as unnecessary. Article 2212, codified as Chapter 32, excepts statutory contribution schemes from its application, and it is not necessary to restate the implied repeal of other laws.
CHAPTER 34. EXECUTION ON JUDGMENTS

SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT

Sec. 34.001. NO EXECUTION ON DORMANT JUDGMENT

Sec. 34.002. EFFECT OF PLAINTIFF'S DEATH

Sec. 34.003. EFFECT OF DEFENDANT'S DEATH

Sec. 34.004. LEVY ON PROPERTY CONVEYED TO THIRD PARTY

Sec. 34.005. LEVY ON PROPERTY OF SURETY

[Sections 34.006-34.020 reserved for expansion]

SUBCHAPTER B. RECOVERY OF SEIZED PROPERTY

Sec. 34.021. RECOVERY OF PROPERTY BEFORE SALE

Sec. 34.022. RECOVERY OF PROPERTY VALUE AFTER SALE

[Sections 34.023-34.040 reserved for expansion]

SUBCHAPTER C. SALE

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR

Sec. 34.042. SALE OF CITY LOTS

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Sec. 34.044. STOCK SHARES SUBJECT TO SALE

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Sec. 34.046. PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE

Sec. 34.047. DISTRIBUTION OF SALE PROCEEDS

Sec. 34.048. PURCHASE BY OFFICER VOID

[Sections 34.049-34.060 reserved for expansion]

SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

Sec. 34.061. DUTY TOWARD SEIZED PERSONALTY; LIABILITY

Sec. 34.062. DUTY OF SUCCESSOR OFFICER

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Sec. 34.065. FAILURE TO LEVY OR SELL

Sec. 34.066. IMPROPER SALE

Sec. 34.067. FAILURE TO DELIVER MONEY COLLECTED
CHAPTER 34. EXECUTION ON JUDGMENTS

SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT

Revised Law

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

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

Source Law

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

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

Revisor's Note

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

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

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

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

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

Source Law
Art. 3775. Where a sole plaintiff, or one of several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made; provided that if there be no administration upon the estate of such deceased sole plaintiff or plaintiffs, and none necessary as shown by an affidavit filed with the clerk of the court in which
judgment was obtained, execution shall issue in the name of all the plaintiffs, both living and deceased, as shown in the judgment, and all money or moneys collected thereunder by the officer levying such execution, and paid unto the registry of the court, out of which such execution issued shall be partitioned among and paid to parties entitled to the same, and in the proportions to which they are entitled to the same under proper order of the presiding judge of said court.

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

Revised Law

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

Source Law

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

Revised Law

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

Source Law

Art. 3792. Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.
Sec. 34.005. LEVY ON PROPERTY OF SURETY. (a) If the face of a writ of execution or the endorsement of the clerk shows that one of the persons against whom it is issued is surety for another, the officer must first levy on the principal's property that is subject to execution and is located in the county in which the judgment is rendered.

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

Art. 3786. If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. If property of the principal cannot be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, and upon so much of the property of the surety as may be necessary to make the amount of the execution.

[Sections 34.006-34.020 reserved for expansion]

SUBCHAPTER B. RECOVERY OF SEIZED PROPERTY

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

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

Revised Law

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

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

Source Law

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

Revisor's Note

(End of Subchapter)

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

[Sections 34.023-34.040 reserved for expansion]

SUBCHAPTER C. SALE

Revised Law

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

Source Law

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

Revised Law

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

Source Law

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

Revised Law

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

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

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

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

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

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

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

Source Law

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

Revised Law

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

Source Law

Art. 3798. Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock.
Sec. 34.045. CONVEYANCE OF TITLE AFTER SALE. (a) When the sale has been made and its terms complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest, and claim that the defendant in execution had in the property sold.

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

(V.A.C.S. Arts. 3816, 3817.)

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

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

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

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

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

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

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

Source Law

Art. 3800. The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property.

Art. 3824. When an officer has collected money on execution, he shall pay the same to the party entitled thereto at the earliest opportunity.

Art. 3827. If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Revised Law

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

Source Law

Art. 3820. If any officer or his deputy making sale of property on execution, shall, directly or indirectly, purchase the same, the sale shall be void.

[Sections 34.049-34.060 reserved for expansion]
SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

Revised Law

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

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

Source Law

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

Revised Law

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

Source Law

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

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

Source Law

Art. 3785. The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do so, or in case of false indorsement, he and his sureties shall be liable on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty percent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement.

Revisor's Note

The first sentence and part of the second sentence of the source law were replaced by Rule 636, Texas Rules of Civil Procedure. The "failure" referred to in the source law applies only to the failure to number writs if more than one is received. See De Witt v. Dunn, 15 Tex. 106 (1855).

Revised Law

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

Source Law

Art. 3826. Should an officer neglect or refuse
to return any execution as required by law, or should
he make a false return thereon, he and his sureties
shall be liable to the party entitled to receive the
money collected on such execution for the full amount
of the debt, interest and costs to be recovered as
provided in the preceding article.

Revisor's Note

The "preceding article" referred to in the source
law is revised in this chapter as Section 34.065, and
the method of recovery is derived from the source law
for that section.

Revised Law

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

Source Law

Art. 3825. Should an officer fail or refuse to
levy upon or sell any property subject to execution,
when the same might have been done, he and his sureties
shall be liable to the party entitled to receive the
money collected on such execution for the full amount
of the debt, interest and costs, to be recovered on
motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Revised Law

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

Source Law

Art. 3819. Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner prescribed herein, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered on motion, five days notice thereof being given such officer and his sureties.

Revisor's Note

The "previous notice herein directed" referred to by the source law is contained in Rules 647-650, Texas Rules of Civil Procedure, and "the manner prescribed herein" is provided for by Rules 646a-653.

Revised Law

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

Source Law

If an officer fails or refuses to pay money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent per month thereon, besides interest and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.
CHAPTER 35. ENFORCEMENT OF JUDGMENTS OF OTHER STATES

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

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

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

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

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

Source Law
Sec. 2. A copy of any foreign judgment authenticated in accordance with an act of congress or statutes of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed. A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed.

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

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

(c) The notice must include the name and post office address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address. (V.A.C.S. Art. 2328b-5, Secs. 3(a), (b) (part).)
Sec. 3. (a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.  
(b) The clerk shall promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall note the mailing in the docket. The notice must include the name and post office address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address.

Sec. 35.005. ALTERNATE NOTICE OF Filing--JUDGMENT CREDITOR. 
(a) The judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk.  
(b) A clerk's lack of mailing the notice of filing does not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. (V.A.C.S. Art. 2328b-5, Sec. 3(b) (part).)

The judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

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

(V.A.C.S. Art. 2328b-5, Sec. 4.)

Source Law

Sec. 4. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted and proves that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court any ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, and require the same security for satisfaction of the judgment that is required in this state.

Revised Law

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

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

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

Source Law

Sec. 5. FEES. (a) A person filing a foreign judgment shall pay to the clerk of the court the amount as otherwise provided by law for filing suit in the courts of this state. Fees for other enforcement proceedings shall be as otherwise provided by law for judgments of the courts of this state.

(b) Filing fees are due and payable at the time of filing.
Sec. 35.008. OPTIONAL PROCEDURE. A judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this chapter. (V.A.C.S. Art. 2328b-5, Sec. 6.)

Sec. 6. The judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this Act.

Section 7 of V.A.C.S. Article 2328b-5, which states that the "Act shall be interpreted and construed to achieve its general purpose to make the law of those states which enact it uniform," is omitted as unnecessary. Section 3.08 of the Code Construction Act (V.A.C.S. Article 5429b-2) provides for the uniform construction of uniform acts.
CHAPTER 36. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES

Sec. 36.001. DEFINITIONS. In this chapter:

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

(A) the United States;

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

(C) the Panama Canal Zone; or

(D) the Trust Territory of the Pacific Islands.

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

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

(B) support in a matrimonial or family matter.

(V.A.C.S. Art. 2328b-6, Sec. 2.)

Sec. 2. In this Act:

(1) "Foreign country" means a governmental unit other than the United States, or a state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands.

(2) "Foreign country judgment" means a judgment of a foreign country granting or denying a sum of
money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Revised Law

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

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

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

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

Source Law

Sec. 3. This Act applies to any foreign country judgment:

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

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

Sec. 10. This Act does not apply to a judgment rendered before the effective date of this Act.

Revisor's Note

The date in Subsection (b) of the revised law is the effective date of the source law.

Revised Law

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

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

Sec. 4. Except as provided in Section 5 of this Act, a foreign country judgment meeting the requirements of Section 3 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign country judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.

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

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

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

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

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

(1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend;
(2) the judgment was obtained by fraud;
(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;
(4) the judgment conflicts with another final and conclusive judgment;
(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or
(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of "foreign country judgment." (V.A.C.S. Art. 2328b-6, Sec. 5.)

Source Law
Sec. 5. (a) A foreign country judgment is not conclusive if:
(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
(2) the foreign country court did not have personal jurisdiction over the defendant; or
(3) the foreign country court did not have jurisdiction over the subject matter.
(b) A foreign country judgment need not be recognized if:
(1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to enable him to defend;
(2) the judgment was obtained by fraud;
(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;
(4) the judgment conflicts with another final and conclusive judgment;
(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;
(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or
it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in Texas, conform to the definition of "foreign country judgment" in Section 2(2) of this Act.

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

1. the defendant was served personally in the foreign country;
2. the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
3. the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved;
4. the defendant was domiciled in the foreign country when the proceedings were instituted, or, if the defendant is a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign country;
5. the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or
6. the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of operation of the motor vehicle or airplane.

(b) A court of this state may recognize other bases of jurisdiction. (V.A.C.S. Art. 2328b-6, Sec. 6.)
Sec. 6. (a) The foreign country judgment shall not be refused recognition for lack of personal jurisdiction if:

1. the defendant was served personally in the foreign country;
2. the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
3. the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved;
4. the defendant was domiciled in the foreign country when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign country;
5. the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or
6. the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

Sec. 7. If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until a period of time sufficient to enable the defendant to prosecute the appeal has expired.

(V.A.C.S. Art. 2328b-6, Sec. 7.)

Sec. 7. If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.
Revised Law

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

Source Law

Sec. 8. This Act does not prevent the recognition of a foreign country judgment in situations not covered by this Act.

Revisor's Note

(End of Chapter)

Section 9 of V.A.C.S. Article 2328b-6, which states that the "Act shall be construed to carry out its general purpose to make uniform the law of those states that enact it," is omitted as unnecessary. Section 3.08, Code Construction Act (V.A.C.S. Article 5429b-2), provides for the uniform construction of uniform acts.
CHAPTER 37. DECLARATORY JUDGMENTS

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

Sec. 37.002. SHORT TITLE, CONSTRUCTION, INTERPRETATION. (a) This chapter may be cited as the Uniform Declaratory Judgments Act. (b) This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be

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liberally construed and administered.

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

Source Law

Sec. 12. This Act is declared to be remedial;
its purpose is to settle and to afford relief from
uncertainty and insecurity with respect to rights,
status, and other legal relations; and is to be
liberally construed and administered.

Sec. 15. This Act shall be so interpreted and
construed as to effectuate its general purpose to make
uniform the law of those States which enact it, and to
harmonize, as far as possible, with federal laws and
regulations on the subject of declaratory judgments and
decrees.

Sec. 16. This Act may be cited as the Uniform
Declaratory Judgments Act.

Revised Law

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

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

(c) The enumerations in Sections 37.004 and 37.005 do not
limit or restrict the exercise of the general powers conferred in
this section in any proceeding in which declaratory relief is
sought and a judgment or decree will terminate the controversy or
remove an uncertainty. (V.A.C.S. Art. 2524-1, Secs. 1, 5.)
Art. 2524-1
Sec. 1. SCOPE. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

Sec. 5. ENUMERATION NOT EXCLUSIVE. The enumeration in Sections 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

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

(b) A contract may be construed either before or after there has been a breach. (V.A.C.S. Art. 2524-1, Secs. 2, 3.)
Sec. 37.005. DECLARATIONS RELATING TO TRUST OR ESTATE. A person interested as or through an executor, administrator, trustee, guardian, other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect to the trust or estate:

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

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

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

Sec. 4. EXECUTOR, ETc. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

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

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

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Sec. 37.006. PARTIES. (a) When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties. A declaration does not prejudice the rights of a person not a party to the
(b) In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard. (V.A.C.S. Art. 2524-1, Sec. 11.)

Sec. 11. PARTIES. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the Statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard.

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

Sec. 9. JURY TRIAL. When a proceeding under this Act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court in which the proceeding is pending.

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

Source Law
Sec. 6. DISCRETIONARY. The Court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

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

Source Law
Sec. 10. COSTS. In any proceeding under this Act the Court may make such award of costs and reasonable and necessary attorney's fees as may seem equitable and just.

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

Source Law
Sec. 7. REVIEW. All orders, judgments, and decrees under this Act may be reviewed as other orders, judgments, and decrees.

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

Source Law

Sec. 8. SUPPLEMENTAL RELIEF. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a Court having jurisdiction to grant the relief. If the application be deemed sufficient, the Court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

Revisor's Note
(End of Chapter)

The revised law omits Section 14 (severability clause) as unnecessary. Severability of statutes is provided by V.A.C.S. Article 11a and the Code Construction Act (V.A.C.S. Article 5429b-2).
CHAPTER 38. ATTORNEY'S FEES

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

1. rendered services;
2. performed labor;
3. furnished material;
4. freight or express overcharges;
5. lost or damaged freight or express;
6. killed or injured stock;
7. a sworn account; or
8. an oral or written contract. (V.A.C.S. Art. 2226 (part).)

Source Law

Art. 2226. Any person, corporation, partnership, or other legal entity having a valid claim against a person or corporation for services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express, or stock killed or injured, or suits founded upon a sworn account or accounts, or suits founded on oral or written contracts . . . may . . . also recover, in addition to his claim and costs, a reasonable amount as attorney's fees.
Revisor's Note

(1) The revised law omits the source law reference to a "corporation, partnership, or other legal entity" in the description of a claimant because the Code Construction Act (V.A.C.S. Article 5429b-2) includes those entities in the definition of "person."

(2) The revised law does not use "person" in the reference to an opposing party because the Code Construction Act definition of "person" is broader than the source law meaning of the term.

Revised Law

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

(1) the claimant must be represented by an attorney;

(2) the claimant must present the claim to the opposing party or to a duly authorized agent of the opposing party;

and

(3) payment for the just amount owed must not have been tendered before the expiration of the 30th day after the claim is presented. (V.A.C.S. Art. 2226 (part).)

Source Law

... may present the same to such persons or corporation or to any duly authorized agent thereof; and if, at the expiration of 30 days thereafter, payment for the just amount owing has not been tendered, the claimant may, if represented by an attorney, also recover ... a reasonable amount as attorney's fees.

Revised Law

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

The usual and customary fees in such cases shall be presumed to be reasonable, but such presumption may be rebutted by competent evidence.

Revisor's Note

The revised law omits the source law material relating to the use of competent evidence to rebut a presumption as unnecessary since all presumptions may be rebutted in that way.

Revised Law

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

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

Source Law

In a proceeding before the court, or in a jury case where the issue of amount of attorney's fees is submitted to the court for determination by agreement, the court may in its discretion take judicial knowledge of the usual and customary fees in such matters and of the contents of the case file without receiving further evidence.

Revised Law

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

Source Law

This Act shall be liberally construed to promote its underlying purposes.
The revised law retains the source law material regarding liberal construction because this article is an exception to the general rule that a statute that authorizes the recovery of attorney's fees is penal in character and must be strictly construed. See, e.g., First Preferred Ins. Co. v. Bell, 587 S.W.2d 798 (Tex. Civ. App.--Amarillo 1979, writ ref'd n.r.e.).

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

1. Article 3.62, Insurance Code;
2. Section 1, Chapter 387, Acts of the 55th Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas Insurance Code);
3. Chapter 9, Insurance Code;
4. Article 21.21, Insurance Code; or

The provisions hereof shall not apply to contracts of insurers issued by insurers subject to the provisions of the Unfair Claim Settlement Practices Act (Article 21.21-2, Insurance Code), nor shall it apply to contracts of any insurer subject to the provisions of Article 3.62, Insurance Code, or to Chapter 387, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 3.62-1, Vernon's Texas Insurance Code), or to Article 21.21, Insurance Code, as amended, or to Chapter 9, Insurance Code, as amended, and each such article or chapter shall be and remain in full force and effect.

The language in V.A.C.S. Article 2226 relating to the force and effect of the Insurance Code provisions.
is omitted as unnecessary.

[Chapters 39-50 reserved for expansion]
SUBTITLE D. APPEALS

CHAPTER 51. APPEALS

SUBCHAPTER A. APPEALS FROM JUSTICE COURT

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

Sec. 51.002. CERTIORARI FROM JUSTICE COURT

[Sections 51.003-51.010 reserved for expansion]

SUBCHAPTER B. APPEALS FROM COUNTY OR DISTRICT COURT

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

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

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

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER

SUBTITLE D. APPEALS

CHAPTER 51. APPEALS

SUBCHAPTER A. APPEALS FROM JUSTICE COURT

Revised Law

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

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

Source Law

Art. 2454. A party to a final judgment in any justice court may appeal therefrom to the county court
where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law.

Art. 2455. In all counties in which the civil jurisdiction of the county courts has been transferred to the district courts, appeals . . . may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals . . . are allowed by general law to remove causes to the county court.

Art. 2455-1. In all counties in which the civil and criminal jurisdiction, or either, of county courts has been transferred to the district courts, appeals . . . may be prosecuted to remove a case tried before a justice of the peace to the district court in the same manner and under the same circumstances under which appeals . . . are allowed by general law to remove causes to the county court.

Revisor's Note

The revised law omits language in V.A.C.S. Article 2455-1 relating to the transfer of the criminal jurisdiction of a county court to a district court. That situation is provided for by Article 4.09, Code of Criminal Procedure, 1965.

Revised Law

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

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

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

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

Source Law

Art. 941. After final judgment in a justice court in any cause except in cases of forcible entry and detainer, the cause may be removed to the county court by writ of certiorari (or if the civil jurisdiction has been transferred from the county to the district court, then to the district court,) in the manner hereinafter directed.

Art. 2455. In all counties in which the civil jurisdiction of the county courts has been transferred to the district courts and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which . . . and writs of certiorari are allowed by general law to remove causes to the county court.

Art. 2455-1. In all counties in which the civil and criminal jurisdiction, or either, of county courts has been transferred to the district courts, writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court in the same manner and under the same circumstances under which . . . and writs of certiorari are allowed by general law to remove causes to the county court.

Art. 2460. A cause tried before a justice, wherein the amount in controversy or the judgment exceeds twenty dollars, exclusive of costs, may be removed from such justice court to the county court by certiorari under the rules prescribed in the title and chapter relating thereto. Whenever a writ of certiorari to remove any cause from the justice court to the county court shall be served on any justice of the peace, he shall immediately make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals, and send same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in the preceding article.

Revisor's Note

The revised law omits language in V.A.C.S. Article 2455-1 relating to the transfer of the criminal jurisdiction of a county court to a district court.

That situation is provided for by Article 4.09, Code of Criminal Procedure, 1965.
[Sections 51.003-51.010 reserved for expansion]

SUBCHAPTER B. APPEALS FROM COUNTY OR DISTRICT COURT

Revised Law

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

Source Law

Art. 960. Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justice courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts.

Revised Law

Sec. 51.012. APPEAL OR WRIT OF ERROR TO COURT OF APPEALS. (a) In a civil case in which the judgment or amount in controversy exceeds $100, exclusive of interest and costs, a person may take an appeal or writ of error to the court of appeals from a final judgment of the district or county court. (b) A party who participates in person or by the party's attorney in the actual trial of a case in the trial court is not entitled to review by the court of appeals by writ of error. (V.A.C.S. Arts. 2249, 2249a.)

Source Law

Art. 2249. An appeal or Writ of Error may be taken to the Court of Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil
cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs.

Art. 2249a
Sec. 1. No party who participates either in person or by his attorney in the actual trial of the case in the trial court shall be entitled to review by the Court of Appeals through means of writ of error.

Sec. 2. All laws and parts of laws, insofar as they conflict with this Act, are repealed. Writ of error shall continue to be available under the rules and regulations of the law to a party who does not participate in the trial of the case in the trial court.

Revisor's Note

The revised law omits V.A.C.S. Article 2249a, Section 2. The repealer has already been executed and the second sentence merely states the converse of Subsection (b) of the revised law.

Revised Law

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

Source Law

Art. 2255. The writ of error, in cases where the same is allowed, may be sued out at any time within six months after the final judgment is rendered.

Revised Law

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

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

Source Law

Art. 2250. An appeal shall lie from an
interlocutory order of the District, County Court at
Law, or County Court:
1. Appointing a receiver or trustee in any
cause;
2. Overruling a motion to vacate an order
appointing a receiver or trustee in any case; or
3. Certifying or refusing to certify a class in
a suit brought pursuant to Rule 42 of the Texas Rules
of Civil Procedure.

Art. 2251. Appeals from orders of the district
and county courts granting or dissolving temporary
injunctions shall lie in the cases and in the manner
provided in the title "Injunctions."

Art. 4662. Any party to a civil suit wherein a
temporary injunction may be granted or refused or when
motion to dissolve has been granted or overruled, under
any provision of this title, in term time or in
vacation, may appeal from such order or judgment to the
Court of Appeals.

Revisor's Note

The revised law omits the reference to "term time
or . . . vacation" because it is unnecessary. Section
65.021 authorizes the judge to conduct the proceedings
in term or vacation.

[Chapters 52-60 reserved for expansion]