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
FOREWORD

The Texas Legislative Council is required by law (Article 5429b-1, Vernon's Texas Civil Statutes) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable and usable" without altering the sense, meaning, or effect of the law.

Under the new classification scheme adopted by the council, our statutes will eventually consist of 26 codes. To date, the council has produced and the legislature has enacted the Business & Commerce Code, Education Code, Water Code, Parks and Wildlife Code, Alcoholic Beverage Code, Natural Resources Code, Property Code, Tax Code, Agriculture Code, and Human Resources Code. The council staff also assisted the state bar in the Penal Code and Family Code projects, which were substantive revisions, and revised the retirement laws into the new Title 110B of the Revised Statutes.

The Civil Practice and Remedies Code is a nonsubstantive revision of the Texas statutes relating to civil procedure and civil remedies and liabilities. Because of the wide range of subjects that the council staff determined should be included in the code, the source law for the code is not compiled in Vernon's Texas Civil Statutes as a single group of statutes.

The code is divided into titles, chapters, subchapters, and sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

The council staff encourages examination and review of the code by any interested person. Meticulous care has been taken within the staff to include in the proposed code all source law assigned to the code and to ensure that no substantive change has been made in the law. However, a complete and adequate outside review is necessary.

The reviser's report is arranged to facilitate review. The report states the Revised Law, which is the text of the proposed new language, and then provides the Source Law, which is the text of the current law from which the revised law is taken. If further explanation of either the revised law or the source law is required, a Reviser's Note is included after the source law. All substance in the source law should be revised in the revised law or the reason for its omission should be explained in a reviser's note.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful for a reviewer to refer to the source law as printed in Vernon's Texas Civil Statutes (so that the quoted source law may be seen in present context) and to the cross-reference table (showing where the current statutes appear, as revised, in the code). The cross-reference table is printed as Appendix C to the reviser's report.

The revision will require conforming amendments to several
statutes not included in the code; these amendments are printed in Appendix A to the reviser's report. A subject index is printed as Appendix B to the reviser's report.

Vernon's Texas Civil Statutes has continued to print the text of some articles repealed by the Texas Rules of Civil Procedure. The printed articles were amended by the 46th Legislature, and the amendments became effective subsequent to the effective date of the Rules of Practice Act, May 15, 1939. The articles were then included in the Texas Supreme Court's list of articles deemed repealed effective September 1, 1941. Because the articles are repealed, they are not set out in the source law material.

In reviewing the proposed code, the reader should keep in mind the following:

(1) The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the code. That Act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The Act is printed as Appendix D to the reviser's report.

(2) The proposed code is written in modern American English. Like some of the newer translations of the Bible, the style and language of the new code may take some getting used to, but it is hoped that it will be clearer and more readable as the reader becomes accustomed to it. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The staff's authority does not include improving the substance of law. The sole purpose of this draft is to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

The Civil Practice and Remedies Code project is under the direction of Rita Arneil, Legislative Counsel, of the council staff. Questions, comments, or suggestions may be directed to her at P.O. Box 12128, Capitol Station, Austin, Texas 78711, or at telephone number (512) 475-2736.