

1 AN ACT

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

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

5 ARTICLE 1. GENERAL MATTERS

6 SECTION 1.01. PURPOSE OF ACT. (a) This Act is enacted as a
7 part of the state's continuing statutory revision program under
8 Section 323.007, Government Code. The program contemplates a
9 topic-by-topic revision of the state's general and permanent
10 statute law without substantive change.

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

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

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

19 (3) eliminating repealed, duplicative,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

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

1 ARTICLE 2. MISCELLANEOUS COMMERCIAL PROVISIONS

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

5 TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS

6 CHAPTER 51. BUSINESS OPPORTUNITIES

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 51.001. SHORT TITLE

9 Sec. 51.002. GENERAL DEFINITIONS

10 Sec. 51.003. DEFINITION OF BUSINESS OPPORTUNITY

11 Sec. 51.004. LIBERAL CONSTRUCTION AND APPLICATION

12 Sec. 51.005. BURDEN OF PROOF

13 Sec. 51.006. WAIVER

14 Sec. 51.007. MAINTENANCE OF RECORDS

15 Sec. 51.008. FILING FEE

16 Sec. 51.009. RULES

17 [Sections 51.010-51.050 reserved for expansion]

18 SUBCHAPTER B. REGISTRATION OF BUSINESS OPPORTUNITY

19 Sec. 51.051. FILING OF DISCLOSURE STATEMENTS AND LIST
20 OF SELLERS

21 Sec. 51.052. UPDATING OF INFORMATION ON FILE

22 Sec. 51.053. FILING OF DISCLOSURE DOCUMENT FROM OTHER
23 REGULATORY AGENCY

24 Sec. 51.054. FILING OF COPY OF BOND OR NOTIFICATION OF
25 ACCOUNT

26 [Sections 51.055-51.100 reserved for expansion]

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

2 Sec. 51.101. BOND, TRUST ACCOUNT, OR LETTER OF CREDIT
3 REQUIRED

4 Sec. 51.102. ACTION AGAINST BOND, TRUST ACCOUNT, OR
5 LETTER OF CREDIT

6 [Sections 51.103-51.150 reserved for expansion]

7 SUBCHAPTER D. DISCLOSURE STATEMENT

8 Sec. 51.151. DISCLOSURE TO PURCHASER OF BUSINESS
9 OPPORTUNITY

10 Sec. 51.152. COVER SHEET OF DISCLOSURE STATEMENT

11 Sec. 51.153. CONTENTS: NAMES AND ADDRESSES

12 Sec. 51.154. CONTENTS: SALES PERIODS

13 Sec. 51.155. CONTENTS: SERVICES DESCRIPTION

14 Sec. 51.156. CONTENTS: UPDATED FINANCIAL STATEMENT

15 Sec. 51.157. CONTENTS: TRAINING DESCRIPTION

16 Sec. 51.158. CONTENTS: SECURITY DESCRIPTION

17 Sec. 51.159. CONTENTS: DELIVERY DATE; CANCELLATION OF
18 CONTRACT

19 Sec. 51.160. CONTENTS: SALES OR EARNINGS
20 REPRESENTATION

21 Sec. 51.161. CONTENTS: LEGAL ACTION HISTORY

22 Sec. 51.162. CONTENTS: BANKRUPTCY OR REORGANIZATION

23 Sec. 51.163. CONTENTS: CONTRACT COPY

24 Sec. 51.164. USE OF DISCLOSURE DOCUMENT FROM OTHER
25 REGULATORY AGENCY

26 [Sections 51.165-51.200 reserved for expansion]

1 SUBCHAPTER E. BUSINESS OPPORTUNITY CONTRACT

2 Sec. 51.201. FORM OF BUSINESS OPPORTUNITY CONTRACT

3 Sec. 51.202. DELIVERY OF COPIES OF DOCUMENTS TO
4 PURCHASER

5 Sec. 51.203. EFFECT OF ASSIGNMENT OF BUSINESS
6 OPPORTUNITY CONTRACT

7 [Sections 51.204-51.250 reserved for expansion]

8 SUBCHAPTER F. TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION

9 Sec. 51.251. VOLUNTARY TERMINATION OF BUSINESS
10 OPPORTUNITY REGISTRATION

11 Sec. 51.252. INVOLUNTARY TERMINATION OF BUSINESS
12 OPPORTUNITY REGISTRATION

13 [Sections 51.253-51.300 reserved for expansion]

14 SUBCHAPTER G. ENFORCEMENT

15 Sec. 51.301. PROHIBITED ACTS

16 Sec. 51.302. DECEPTIVE TRADE PRACTICE; REMEDIES

17 Sec. 51.303. REVIEW AND SUIT BY ATTORNEY GENERAL

18 CHAPTER 51. BUSINESS OPPORTUNITIES

19 SUBCHAPTER A. GENERAL PROVISIONS

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

22 Sec. 51.002. GENERAL DEFINITIONS. In this chapter:

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

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

1 loss.

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

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

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

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

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

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

27 (6) "Product" includes tangible personal property.

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

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

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

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

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

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

20 (2) the seller will:

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

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

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

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

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

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

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

20 (3) a transaction that is:

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

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

27 (4) a real estate syndication;

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

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

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

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

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

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

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

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

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

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

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

1 other action of the Federal Trade Commission; and

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

5 (i) the name of the franchisor;

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

8 (iii) the franchisor's principal business
9 address.

10 (c) The secretary of state shall prescribe the form of the
11 notice described by Subsection (b)(8)(B). (Bus. & Com. Code, Sec.
12 41.004.)

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

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

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

20 (b) In construing this chapter, a court to the extent
21 possible shall follow the interpretations given by the Federal
22 Trade Commission and the federal courts to Section 5(a)(1), Federal
23 Trade Commission Act (15 U.S.C. Section 45(a)(1)), and 16 C.F.R.
24 Part 436 and their subsequent amendments. (Bus. & Com. Code, Sec.
25 41.002.)

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

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

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

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

7 (b) A document relating to a business opportunity sold or
8 leased shall be maintained until the fourth anniversary of the date
9 of the business opportunity contract. (Bus. & Com. Code, Sec.
10 41.008.)

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

15 Sec. 51.009. RULES. The secretary of state may adopt rules
16 to administer and enforce this chapter. (Bus. & Com. Code, Sec.
17 41.006.)

18 [Sections 51.010-51.050 reserved for expansion]

19 SUBCHAPTER B. REGISTRATION OF BUSINESS OPPORTUNITY

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

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

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

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

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

5 (1) annually; and

6 (2) when a material change occurs.

7 (b) The list filed under Section 51.051(2) must be updated
8 through a new filing every six months. (Bus. & Com. Code, Sec.
9 41.052.)

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

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

21 (1) the bond; or

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

24 [Sections 51.055-51.100 reserved for expansion]

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

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

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

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

6 (2) establish a trust account; or

7 (3) obtain an irrevocable letter of credit.

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

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

11 (2) in favor of this state. (Bus. & Com. Code, Sec.
12 41.101.)

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

17 (1) a violation of this chapter; or

18 (2) the seller's breach of:

19 (A) the business opportunity contract; or

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

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

26 [Sections 51.103-51.150 reserved for expansion]

1 SUBCHAPTER D. DISCLOSURE STATEMENT

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

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

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

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

12 Sec. 51.152. COVER SHEET OF DISCLOSURE STATEMENT. (a) A
13 disclosure statement must have a cover sheet titled, in at least
14 12-point boldface capital letters, "DISCLOSURES REQUIRED BY TEXAS
15 LAW." The following statement must appear below the title in at
16 least 10-point boldface type: "The State of Texas has not reviewed
17 and does not endorse, approve, recommend, or sponsor any business
18 opportunity. The information contained in this disclosure has not
19 been verified by the state. If you have any questions about this
20 investment, see an attorney before you sign a contract or
21 agreement."

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

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

26 (1) the name of the seller;

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

1 is transacting, or intends to transact business;

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

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

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

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

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

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

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

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

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

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

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

- 1 (A) the full nature of those services; and
2 (B) the nature of any agreements to be made with
3 the owners or managers of that location. (Bus. & Com. Code, Sec.
4 41.155.)

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

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

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

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

15 (1) the length of the training; and

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

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

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

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

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

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

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

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

1 than the third year before the date of the disclosure statement,
2 purchased business opportunities involving the product, equipment,
3 supplies, or services being offered. (Bus. & Com. Code, Sec.
4 41.160.)

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

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

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

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

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

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

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

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

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

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

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

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

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

- 5 (1) the identity and location of any court or agency;
6 (2) the date of any entry of a plea of nolo contendere,
7 conviction, judgment, or decision;
8 (3) any penalty imposed;
9 (4) any damages assessed;
10 (5) the terms of any settlement or order; and
11 (6) the date, nature, and issuer of any order or
12 ruling. (Bus. & Com. Code, Sec. 41.161.)

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

- 17 (1) filed in bankruptcy;
18 (2) been adjudged bankrupt;
19 (3) been reorganized because of insolvency; or
20 (4) been a principal, director, executive officer, or
21 partner of any other person that, during or not later than the first
22 anniversary of the end of the period the person held the position in
23 relation to the other person, filed in bankruptcy, was adjudged
24 bankrupt, or was reorganized because of insolvency.

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

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

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

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

5 Sec. 51.163. CONTENTS: CONTRACT COPY. A disclosure
6 statement must contain a copy of the business opportunity contract
7 that the seller uses as a matter of course and that will be
8 presented to the purchaser at closing. (Bus. & Com. Code, Sec.
9 41.163.)

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

17 [Sections 51.165-51.200 reserved for expansion]

18 SUBCHAPTER E. BUSINESS OPPORTUNITY CONTRACT

19 Sec. 51.201. FORM OF BUSINESS OPPORTUNITY CONTRACT. A
20 business opportunity contract must be in writing and include, in
21 10-point type or in handwriting of an equivalent size, the
22 following:

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

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

27 (3) the seller's principal business address;

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

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

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

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

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

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

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

25 [Sections 51.204-51.250 reserved for expansion]

26 SUBCHAPTER F. TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION

27 Sec. 51.251. VOLUNTARY TERMINATION OF BUSINESS OPPORTUNITY

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

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

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

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

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

14 Sec. 51.252. INVOLUNTARY TERMINATION OF BUSINESS
15 OPPORTUNITY REGISTRATION. (a) The secretary of state may
16 terminate the registration of a business opportunity registered
17 under Section 51.051 if the seller does not comply with Section
18 51.052.

19 (b) The secretary of state must give the business
20 opportunity registrant notice of the delinquency not later than the
21 31st day before the date of termination of the business opportunity
22 registration under Subsection (a).

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

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

- 1 (1) the termination of a delinquent registration;
2 (2) the effective date of the termination; and
3 (3) the grace period, if any. (Bus. & Com. Code, Sec.
4 41.252.)

5 [Sections 51.253-51.300 reserved for expansion]

6 SUBCHAPTER G. ENFORCEMENT

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

- 8 (1) employ a representation, device, scheme, or
9 artifice to deceive a purchaser;
10 (2) make an untrue statement of a material fact or omit
11 to state a material fact in connection with the documents and
12 information required to be provided to the secretary of state or
13 purchaser;
14 (3) represent that the business opportunity provides
15 or will provide income or earning potential unless the seller:
16 (A) has documented data to substantiate the
17 representation of income or earning potential; and
18 (B) discloses the data to the purchaser when the
19 representation is made; or
20 (4) make a claim or representation that is
21 inconsistent with the information required to be disclosed by this
22 chapter in:
23 (A) advertising or other promotional material;
24 or
25 (B) an oral sales presentation, solicitation, or
26 discussion between the seller and the purchaser. (Bus. & Com. Code,
27 Sec. 41.301.)

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

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

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

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

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

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

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

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

20 (2) on inquiry of the status of the disclosure
21 statement, disclose that a statement has been filed but that the
22 attorney general has questioned the correctness of the statement.

23 (Bus. & Com. Code, Sec. 41.303.)

24 CHAPTER 52. INVENTION DEVELOPMENT SERVICES

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 52.001. SHORT TITLE

27 Sec. 52.002. DEFINITIONS

- 1 Sec. 52.003. APPLICABILITY OF CHAPTER TO CONTRACT FOR
2 INVENTION DEVELOPMENT SERVICES
- 3 Sec. 52.004. WAIVER BY CUSTOMER PROHIBITED
4 [Sections 52.005-52.050 reserved for expansion]
- 5 SUBCHAPTER B. FINANCIAL REQUIREMENTS OF INVENTION DEVELOPERS
- 6 Sec. 52.051. BOND REQUIRED
- 7 Sec. 52.052. BENEFICIARY OF BOND; CLAIM AGAINST BOND
- 8 Sec. 52.053. CASH DEPOSIT INSTEAD OF BOND
9 [Sections 52.054-52.100 reserved for expansion]
- 10 SUBCHAPTER C. INVENTION DEVELOPMENT SERVICES CONTRACT
- 11 Sec. 52.101. WRITTEN CONTRACT REQUIRED; CUSTOMER COPY
- 12 Sec. 52.102. MANDATORY CONTRACT TERMS
- 13 Sec. 52.103. MULTIPLE CONTRACTS
- 14 Sec. 52.104. PAYMENT FOR SERVICES; OPTION TO TERMINATE
15 CONTRACT
- 16 Sec. 52.105. COVER NOTICE REQUIRED
- 17 Sec. 52.106. QUARTERLY REPORTS TO CUSTOMER REQUIRED
18 [Sections 52.107-52.150 reserved for expansion]
- 19 SUBCHAPTER D. ENFORCEMENT
- 20 Sec. 52.151. CONTRACT VOIDABLE
- 21 Sec. 52.152. PRIVATE CAUSE OF ACTION
- 22 Sec. 52.153. DECEPTIVE TRADE PRACTICE
- 23 Sec. 52.154. MUTUALLY EXCLUSIVE REMEDIES
- 24 Sec. 52.155. PRESUMPTION OF INJURY
- 25 Sec. 52.156. ENFORCEMENT BY ATTORNEY GENERAL
- 26 Sec. 52.157. APPLICATION OF OTHER LAWS
- 27 CHAPTER 52. INVENTION DEVELOPMENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

1 Sec. 52.001. SHORT TITLE. This chapter may be cited as the
2 Regulation of Invention Development Services Act. (V.A.C.S. Art.
3 9020, Sec. 1.)

4 Sec. 52.002. DEFINITIONS. In this chapter:

5 (1) "Customer" means:

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

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

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

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

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

21 (B) is not:

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

24 (ii) a nonprofit, charitable, scientific,
25 or educational organization organized under the Texas Non-Profit
26 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil
27

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

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

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

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

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

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

21 (B) performing a patent search; and

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

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

1 contract under which an invention developer agrees to perform
2 invention development services for a customer. (V.A.C.S. Art.
3 9020, Sec. 5(a) (part).)

4 Sec. 52.004. WAIVER BY CUSTOMER PROHIBITED. A waiver by a
5 customer of a provision of this chapter is void. (V.A.C.S. Art.
6 9020, Sec. 9(a) (part).)

7 [Sections 52.005-52.050 reserved for expansion]

8 SUBCHAPTER B. FINANCIAL REQUIREMENTS OF INVENTION DEVELOPERS

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

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

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

19 (2) \$25,000.

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

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

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

1 The bond required by Section 52.051 must be:

2 (1) in favor of this state; and

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

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

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

17 (1) cash deposited with the secretary of state;

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

20 (A) transacting business in this state; and

21 (B) insured by the Federal Deposit Insurance
22 Corporation;

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

26 (A) transacting business in this state; and

27 (B) insured by the Federal Deposit Insurance

1 Corporation; or

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

4 [Sections 52.054-52.100 reserved for expansion]

5 SUBCHAPTER C. INVENTION DEVELOPMENT SERVICES CONTRACT

6 Sec. 52.101. WRITTEN CONTRACT REQUIRED; CUSTOMER COPY. (a)

7 A contract for invention development services must be in writing.

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

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

14 (1) the payment terms;

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

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

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

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

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

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

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

9 (9) a statement that the invention developer:

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

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

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

22 (b) An invention developer is a fiduciary to the extent that
23 the description of specific acts or services required by Subsection
24 (a)(3) gives the invention developer discretion in determining
25 which acts or services will be performed. (V.A.C.S. Art. 9020, Sec.
26 8.)

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

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

- 7 (1) a written statement describing that practice; and
8 (2) a written summary of the developer's normal terms,
9 if any, for subsequent contracts, including the approximate amount
10 of the developer's normal fees or other consideration that the
11 developer may require from the customer. (V.A.C.S. Art. 9020, Sec.
12 5(b).)

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

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

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

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

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

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

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

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

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

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

1 DEVELOPER IS (number).

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

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

17 (c) The cover sheet may not contain anything other than the
18 information required by Subsection (a). (V.A.C.S. Art. 9020, Sec.
19 6.)

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

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

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

6 [Sections 52.107-52.150 reserved for expansion]

7 SUBCHAPTER D. ENFORCEMENT

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

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

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

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

20 (1) violation of this chapter;
21 (2) false or fraudulent statement, representation, or
22 omission of material fact; or

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

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

27 (1) the greater of:

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

3 (B) \$1,000;

4 (2) court costs; and

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

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

9 (1) a violation of this chapter;

10 (2) an omission of material fact; or

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

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

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

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

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

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

27 (b) The attorney general may:

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

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

5 Sec. 52.157. APPLICATION OF OTHER LAWS. This chapter does
6 not nullify or limit any obligation, right, or remedy that is
7 applicable or available under the law of this state. (V.A.C.S. Art.
8 9020, Sec. 12.)

9 CHAPTER 53. STORE LEASES

10 Sec. 53.001. STORE LEASE CONTRACT

11 CHAPTER 53. STORE LEASES

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

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

18 CHAPTER 54. COMPENSATION AGREEMENTS FOR SALES REPRESENTATIVES

19 Sec. 54.001. DEFINITIONS

20 Sec. 54.002. CONTRACT

21 Sec. 54.003. PAYMENT ON TERMINATION OF CERTAIN

22 COMPENSATION AGREEMENTS

23 Sec. 54.004. DAMAGES

24 Sec. 54.005. PERSONAL JURISDICTION

25 Sec. 54.006. WAIVER

26 CHAPTER 54. COMPENSATION AGREEMENTS FOR SALES REPRESENTATIVES

27 Sec. 54.001. DEFINITIONS. In this chapter:

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

5 (2) "Principal" means a person who:

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

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

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

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

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

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

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

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

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

27 Sec. 54.003. PAYMENT ON TERMINATION OF CERTAIN COMPENSATION

1 AGREEMENTS. If a compensation agreement between a sales
2 representative and a principal that does not comply with Section
3 54.002 is terminated, the principal shall pay all commissions due
4 the sales representative not later than the 30th working day after
5 the date of the termination. (Bus. & Com. Code, Sec. 35.83.)

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

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

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

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

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

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

1 SUBCHAPTER A. GENERAL PROVISIONS

2 Sec. 55.001. DEFINITIONS

3 Sec. 55.002. SECURITY INTEREST

4 Sec. 55.003. WAIVER OF CHAPTER

5 [Sections 55.004-55.050 reserved for expansion]

6 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

7 Sec. 55.051. SUPPLEMENTARY AGREEMENT

8 Sec. 55.052. CHANGE IN COMPETITIVE CIRCUMSTANCES

9 Sec. 55.053. INTEREST IN DEALERSHIP BY SALE OR

10 TRANSFER

11 Sec. 55.054. TRANSFER OF CONTROLLING INTEREST IN

12 DEALERSHIP BY SUCCESSION

13 Sec. 55.055. CONTINUATION OF AGREEMENT

14 Sec. 55.056. CAUSE REQUIRED FOR TERMINATION

15 Sec. 55.057. RENOVATION OR ADDITIONAL SPACE

16 [Sections 55.058-55.100 reserved for expansion]

17 SUBCHAPTER C. WARRANTIES

18 Sec. 55.101. APPLICABILITY OF SUBCHAPTER

19 Sec. 55.102. ACCEPTANCE OR REJECTION OF WARRANTY CLAIM

20 Sec. 55.103. SUPPLIER'S RECOVERY OF WARRANTY CLAIM

21 Sec. 55.104. PURCHASER'S WARRANTY AGREEMENT

22 [Sections 55.105-55.150 reserved for expansion]

23 SUBCHAPTER D. DELIVERY, SALE, AND RETURN OF EQUIPMENT

24 Sec. 55.151. COERCED ORDERS, DELIVERIES, OR REFUSALS

25 TO PURCHASE PROHIBITED

26 Sec. 55.152. DISCRIMINATION AMONG DEALERS

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

3 Sec. 55.154. SALES TO AFFILIATED DEALER

4 Sec. 55.155. RETURN OF INVENTORY; RESPONSIBILITY FOR
5 COSTS

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

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

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

12 [Sections 55.159-55.200 reserved for expansion]

13 SUBCHAPTER E. ENFORCEMENT

14 Sec. 55.201. ACTION FOR VIOLATION OF CHAPTER
15 CHAPTER 55. FARM, INDUSTRIAL, OFF-ROAD CONSTRUCTION, FORESTRY
16 HARVESTING, AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 55.001. DEFINITIONS. In this chapter:

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

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

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

27 (A) is primarily engaged in the retail sale and

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

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

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

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

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

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

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

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

27 (A) purchased within the 30-month period

1 preceding the date of the termination of the dealership; or

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

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

8 (10) "Supplier" means:

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

11 (B) the person's successor in interest,
12 including a purchaser of assets or stock and a surviving
13 corporation resulting from a merger, liquidation, or
14 reorganization. (Bus. & Com. Code, Secs. 19.01(2), (3), (4), (5),
15 (6), (7), (8), (9), (10), (11), (12).)

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

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

21 [Sections 55.004-55.050 reserved for expansion]

22 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

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

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

5 Sec. 55.053. INTEREST IN DEALERSHIP BY SALE OR TRANSFER.

6 (a) A supplier may not prevent, by contract or otherwise, a dealer
7 or an officer, member, partner, or shareholder of a dealer from
8 selling or transferring a noncontrolling interest in the dealership
9 to another person.

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

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

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

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

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

7 (1) grants the supplier's consent; or

8 (2) states the supplier's refusal to consent and the
9 specific reasons for the refusal. (Bus. & Com. Code, Secs.
10 19.26(c), (d).)

11 Sec. 55.055. CONTINUATION OF AGREEMENT. Section 55.053 or
12 55.054 does not require a supplier to continue a dealer agreement if
13 the supplier determines that the dealer's area of responsibility or
14 trade area lacks sufficient sales potential to reasonably support
15 continuation of the agreement. (Bus. & Com. Code, Sec. 19.26(e).)

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

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

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

27 (2) reasonable time to complete the renovation or

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

2 [Sections 55.058-55.100 reserved for expansion]

3 SUBCHAPTER C. WARRANTIES

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

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

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

10 Sec. 55.102. ACCEPTANCE OR REJECTION OF WARRANTY CLAIM.

11 (a) Not later than the 30th day after the date a supplier receives a
12 warranty claim from a dealer, the supplier shall accept or reject
13 the claim. A claim not rejected before that date is considered
14 accepted.

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

17 (1) pay the accepted claim; or

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

20 (c) A supplier, including a supplier of an electric engine
21 or motor, who pays a claim may not pay less than the hourly labor
22 rate and other expenses involved in the work that the dealer
23 regularly charges to a retail customer who does not assert a
24 warranty and the dealer's net price plus 15 percent for parts. The
25 number of hours of labor claimed may not exceed 1-1/2 times the
26 supplier's recommended hours for the work. (Bus. & Com. Code, Secs.
27 19.28(b), (c), (d).)

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

5 (1) the claim was fraudulent;

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

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

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

19 [Sections 55.105-55.150 reserved for expansion]

20 SUBCHAPTER D. DELIVERY, SALE, AND RETURN OF EQUIPMENT

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

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

1 required by the supplier or by applicable law; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (B) fixed and predetermined solely by the
24 supplier.

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

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

1 United States or this state;

2 (2) a major fleet account; or

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

5 Sec. 55.155. RETURN OF INVENTORY; RESPONSIBILITY FOR COSTS.

6 (a) If on termination of a dealer agreement the dealer delivers to
7 the supplier or a person designated by the supplier inventory
8 purchased from the supplier and held by the dealer on the date of
9 the termination, the supplier shall pay to the dealer:

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

13 (2) an amount equal to:

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

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

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

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

1 to reimbursement under this section; and

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

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

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

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

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

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

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

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

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

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

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

7 (2) pay the dealer:

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

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

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

18 (c) The supplier shall assume the responsibilities under
19 the lease and pay the amount required by this section before the
20 61st day after the date the supplier receives the data processing or
21 peripheral equipment, software, or specialized repair tools.

22 (d) On payment of the amount required by this section, title
23 or the right of possession to the data processing or peripheral
24 equipment or specialized repair tools purchased or leased by the
25 dealer is transferred to the supplier. (Bus. & Com. Code, Sec.
26 19.44.)

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

1 supplier who does not make a payment required by Section 55.155 or
2 55.156 before the 61st day after the date the supplier receives the
3 final shipment of the inventory, data processing or peripheral
4 equipment, software, or specialized repair tools from the dealer is
5 liable to the dealer for:

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

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

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

13 (4) interest on any amounts owed under Subdivision
14 (1), (2), or (3), at the rate applicable to a judgment of a court of
15 this state, beginning on the 61st day after the date the supplier
16 received the inventory, data processing or peripheral equipment,
17 software, or specialized repair tools;

18 (5) reasonable attorney's fees; and

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

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

23 (1) inventory:

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

27 (B) for which the dealer cannot furnish evidence

1 of clear title that is satisfactory to the supplier; or

2 (2) a repair part that:

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

6 (B) is in a broken or damaged package;

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

9 (D) cannot be sold without reconditioning or
10 repackaging.

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

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

16 (2) a specialized repair tool that:

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

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

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

22 [Sections 55.159-55.200 reserved for expansion]

23 SUBCHAPTER E. ENFORCEMENT

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

26 (1) an injunction to prevent further violation;

27 (2) damages;

- 1 (3) reasonable attorney's fees; and
- 2 (4) costs. (Bus. & Com. Code, Sec. 19.02.)

3 TITLE 5. REGULATION OF BUSINESSES AND SERVICES

4 SUBTITLE A. GENERAL PRACTICES

5 CHAPTER 71. ASSUMED BUSINESS OR PROFESSIONAL NAME

6 SUBCHAPTER A. GENERAL PROVISIONS

- 7 Sec. 71.001. SHORT TITLE
- 8 Sec. 71.002. DEFINITIONS
- 9 Sec. 71.003. APPLICABILITY OF CHAPTER

10 [Sections 71.004-71.050 reserved for expansion]

11 SUBCHAPTER B. REQUIREMENTS APPLICABLE TO CERTAIN UNINCORPORATED
12 PERSONS

- 13 Sec. 71.051. CERTIFICATE FOR CERTAIN UNINCORPORATED
14 PERSONS
- 15 Sec. 71.052. CONTENTS OF CERTIFICATE
- 16 Sec. 71.053. EXECUTION OF CERTIFICATE
- 17 Sec. 71.054. PLACE OF FILING

18 [Sections 71.055-71.100 reserved for expansion]

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

- 21 Sec. 71.101. CERTIFICATE FOR INCORPORATED BUSINESS OR
22 PROFESSION, LIMITED PARTNERSHIP,
23 REGISTERED LIMITED LIABILITY
24 PARTNERSHIP, OR LIMITED LIABILITY
25 COMPANY
- 26 Sec. 71.102. CONTENTS OF CERTIFICATE
- 27 Sec. 71.103. PLACE OF FILING

1 Sec. 71.104. EXECUTION OF CERTIFICATE

2 [Sections 71.105-71.150 reserved for expansion]

3 SUBCHAPTER D. GENERAL PROVISIONS REGARDING ASSUMED NAME
4 CERTIFICATE

5 Sec. 71.151. DURATION AND RENEWAL OF CERTIFICATE

6 Sec. 71.152. MATERIAL CHANGE IN INFORMATION; NEW
7 CERTIFICATE

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

10 Sec. 71.154. INDEX OF CERTIFICATES

11 Sec. 71.155. FILING FEES

12 Sec. 71.156. PRESCRIBED FORMS

13 Sec. 71.157. EFFECT OF FILING

14 Sec. 71.158. FILING OF REPRODUCTION

15 [Sections 71.159-71.200 reserved for expansion]

16 SUBCHAPTER E. PENALTIES

17 Sec. 71.201. CIVIL ACTION; SANCTION

18 Sec. 71.202. CRIMINAL PENALTY: GENERAL VIOLATION

19 Sec. 71.203. CRIMINAL PENALTY: FRAUDULENT FILING

20 CHAPTER 71. ASSUMED BUSINESS OR PROFESSIONAL NAME

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 71.001. SHORT TITLE. This chapter may be cited as the
23 Assumed Business or Professional Name Act. (Bus. & Com. Code, Sec.
24 36.01.)

25 Sec. 71.002. DEFINITIONS. In this chapter:

26 (1) "Address" means:

27 (A) a post office address; and

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

3 (2) "Assumed name" means:

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

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

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

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

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

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

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

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

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

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

6 (5) "Corporation" means:

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

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

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

14 (7) "Office" means:

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

18 (i) principal office; and

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

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

25 (i) registered office; and

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

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

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

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

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

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

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

[Sections 71.004-71.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS APPLICABLE TO CERTAIN UNINCORPORATED
PERSONS

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

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

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

(2) if the registrant is:

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

(B) a partnership:

(i) the venture or partnership name;

(ii) the venture or partnership office
address;

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

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

1 (C) an estate:
2 (i) the name of the estate;
3 (ii) the estate's office address, if any;
4 (iii) the full name of each representative
5 of the estate; and

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

10 (D) a real estate investment trust:
11 (i) the name of the trust;
12 (ii) the address of the trust;
13 (iii) the full name of each trustee
14 manager; and

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

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

21 (i) the name of the company or corporation;
22 (ii) the state, country, or other
23 jurisdiction under the laws of which the company or corporation was
24 organized or incorporated; and

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

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

1 the registrant will use the assumed name; and

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

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

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

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

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

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

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

1 and acknowledge the certificate. (Bus. & Com. Code, Sec.
2 36.10(b).)

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

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

8 (2) conducts business or renders a professional
9 service, if the person does not or will not maintain business or
10 professional premises in any county. (Bus. & Com. Code, Sec.
11 36.10(a) (part).)

12 [Sections 71.055-71.100 reserved for expansion]

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

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

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

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

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

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

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

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

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

12 (5) a statement specifying that the registrant is:

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

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

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

20 (6) the address of:

21 (A) the registrant's:

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

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

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

1 not maintain a registered office in this state:

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

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

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

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

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

20 (1) registered office is located; and

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

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

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

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

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

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

7 (B) the county in which the entity's principal
8 place of business in this state is located is not the same county
9 where the entity's office is located. (Bus. & Com. Code, Sec.
10 36.11(a) (part).)

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

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

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

22 [Sections 71.105-71.150 reserved for expansion]

23 SUBCHAPTER D. GENERAL PROVISIONS REGARDING ASSUMED NAME
24 CERTIFICATE

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

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

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

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

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

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

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

22 (3) for a partnership:

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

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

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

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

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

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

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

- 16 (1) the assumed name being abandoned;
17 (2) the date on which the certificate was filed in the
18 office in which the statement of abandonment is being filed and in
19 any other office in which the certificate was filed; and
20 (3) the registrant's name and residence or office
21 address as required for a certificate filed under this chapter.

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

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

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

1 office of the respective officer; and

2 (2) the persons filing the certificates.

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

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

8 (2) the secretary of state. (Bus. & Com. Code, Sec.
9 36.15 (part).)

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

12 (1) \$2 for filing each certificate or statement
13 required or permitted to be filed under this chapter; and

14 (2) 50 cents for each name to be indexed.

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

17 (1) \$25 for indexing and filing each certificate or
18 statement required or permitted to be filed under this chapter; and

19 (2) \$10 for filing each statement of abandonment of
20 use of an assumed name. (Bus. & Com. Code, Sec. 36.15 (part).)

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

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

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

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

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

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

16 [Sections 71.159-71.200 reserved for expansion]

17 SUBCHAPTER E. PENALTIES

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

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

1 plaintiff or other party bringing the action or proceeding expenses
2 incurred, including attorney's fees, in locating and effecting
3 service of process on the defendant. (Bus. & Com. Code, Sec.
4 36.25.)

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

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

9 (2) intentionally violates this chapter.

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

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

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

19 (2) contains a material false statement; or

20 (3) is forged.

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

25 CHAPTER 72. BUSINESS RECORDS

26 SUBCHAPTER A. DISPOSAL OF CERTAIN BUSINESS RECORDS

27 Sec. 72.001. DEFINITIONS

1 Sec. 72.002. DESTRUCTION OF CERTAIN BUSINESS RECORDS

2 Sec. 72.003. RETENTION OF REPRODUCTION OF BUSINESS
3 RECORDS

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

6 [Sections 72.005-72.050 reserved for expansion]

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

9 Sec. 72.051. REQUIRED DELETION OF CERTAIN ELECTRONIC
10 RECORDS

11 CHAPTER 72. BUSINESS RECORDS

12 SUBCHAPTER A. DISPOSAL OF CERTAIN BUSINESS RECORDS

13 Sec. 72.001. DEFINITIONS. In this subchapter:

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

17 (A) handwriting;

18 (B) typewriting;

19 (C) printing;

20 (D) photostat;

21 (E) photograph;

22 (F) magnetic impulse;

23 (G) mechanical or electronic recording;

24 (H) digitized optical image; or

25 (I) another form of data compilation.

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

1 with one or more of the following:

2 (A) date of birth;

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

5 (C) mother's maiden name;

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

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

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

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

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

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

19 (B) photography, including an enlargement or
20 miniature;

21 (C) mechanical or electronic rerecording;

22 (D) chemical reproduction;

23 (E) digitized optical imaging; or

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

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

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

3 (b) Subsection (a) does not apply if a law or rule
4 applicable to the business record prescribes a different retention
5 period or procedure for disposal. (Bus. & Com. Code, Sec.
6 35.48(b).)

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

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

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

16 (2) a covered entity as defined by Section 601.001 or
17 602.001, Insurance Code.

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

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

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

5 (1) recover the civil penalty;

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

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

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

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

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

18 (2) the business record is historically significant
19 and:

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

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

25 [Sections 72.005-72.050 reserved for expansion]

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

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

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

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

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

16 (2) the customer presents to the business:

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

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

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

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

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

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

3 [Chapters 73-90 reserved for expansion]

4 SUBTITLE B. RENTAL PRACTICES

5 CHAPTER 91. PRIVATE PASSENGER VEHICLE RENTAL COMPANIES

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 91.001. DEFINITIONS

8 [Sections 91.002-91.050 reserved for expansion]

9 SUBCHAPTER B. DAMAGE WAIVERS AND MANDATORY CHARGES

10 Sec. 91.051. WRITTEN AGREEMENT REQUIRED FOR DAMAGE

11 WAIVER

12 Sec. 91.052. NOTICE TO RENTER

13 Sec. 91.053. POSTED NOTICE

14 Sec. 91.054. PROHIBITED REPRESENTATIONS AND COERCION

15 Sec. 91.055. MANDATORY CHARGE

16 Sec. 91.056. VOIDING OF DAMAGE WAIVER

17 [Sections 91.057-91.100 reserved for expansion]

18 SUBCHAPTER C. ENFORCEMENT PROVISIONS

19 Sec. 91.101. CIVIL PENALTY

20 Sec. 91.102. INJUNCTION

21 Sec. 91.103. SUIT FOR CIVIL PENALTY OR INJUNCTIVE

22 RELIEF

23 CHAPTER 91. PRIVATE PASSENGER VEHICLE RENTAL COMPANIES

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 91.001. DEFINITIONS. In this chapter:

26 (1) "Authorized driver" means:

27 (A) the renter;

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

3 (C) the renter's spouse if the spouse:
4 (i) holds a driver's license; and
5 (ii) satisfies any minimum age requirement
6 established by the rental company;

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

9 (i) holds a driver's license;
10 (ii) satisfies any minimum age requirement
11 established by the rental company; and

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

14 (E) a person who:
15 (i) holds a driver's license; and
16 (ii) is driving directly to a medical or
17 police facility under circumstances reasonably believed to
18 constitute an emergency.

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

22 (A) theft and loss of use; and
23 (B) any cost incident to the damage or loss,
24 including storage, impound, towing, and administrative charges.

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

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

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

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

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

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

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

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

21 [Sections 91.002-91.050 reserved for expansion]

22 SUBCHAPTER B. DAMAGE WAIVERS AND MANDATORY CHARGES

23 Sec. 91.051. WRITTEN AGREEMENT REQUIRED FOR DAMAGE WAIVER.

24 A rental company may not sell a damage waiver unless the renter
25 agrees to the damage waiver in writing at or before the time the
26 rental agreement is executed. (V.A.C.S. Art. 9026c, Sec. 2(a).)

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

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

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

13 (b) The notice under Subsection (a) must be in at least
14 10-point type. (V.A.C.S. Art. 9026c, Sec. 3(a).)

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

19 Notice to Texas Residents Regarding Damage Waivers

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

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

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

5 Sec. 91.054. PROHIBITED REPRESENTATIONS AND COERCION. (a)

6 An employee or agent of a rental company may not:

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

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

11 (b) For purposes of this section, if the renter has declined
12 the damage waiver, a further statement or question by the employee
13 or agent that refers to the damage waiver, other than a statement
14 made in conjunction with review of the rental agreement that the
15 waiver has been declined, is considered coercive. (V.A.C.S. Art.
16 9026c, Sec. 5.)

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

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

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

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

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

1 not void a damage waiver unless:

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

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

5 (A) by a person:

6 (i) who is not an authorized driver;

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

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

12 (B) to carry persons or property for hire;

13 (C) to push or tow anything;

14 (D) for driver's training;

15 (E) to engage in a speed contest; or

16 (F) outside the continental United States,

17 unless the rental agreement specifically authorizes the use; or

18 (3) the rental company entered into the rental
19 transaction based on fraudulent information supplied by the renter.

20 (V.A.C.S. Art. 9026c, Sec. 2(b).)

21 [Sections 91.057-91.100 reserved for expansion]

22 SUBCHAPTER C. ENFORCEMENT PROVISIONS

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

27 Sec. 91.102. INJUNCTION. A person injured or threatened

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

4 Sec. 91.103. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF.
5 The attorney general or a county or district attorney may bring an
6 action in the name of the state for a civil penalty under Section
7 91.101, injunctive relief under Section 91.102, or both. (V.A.C.S.
8 Art. 9026c, Sec. 6(b).)

9 CHAPTER 92. RENTAL-PURCHASE AGREEMENTS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 92.001. DEFINITIONS

12 Sec. 92.002. ADVERTISEMENT REQUIREMENTS

13 [Sections 92.003-92.050 reserved for expansion]

14 SUBCHAPTER B. FORM AND CONTENT OF AGREEMENTS

15 Sec. 92.051. FORM OF AGREEMENT

16 Sec. 92.052. REQUIRED DISCLOSURES

17 Sec. 92.053. OTHER REQUIRED PROVISIONS

18 Sec. 92.054. PROHIBITED PROVISIONS

19 Sec. 92.055. RESTRICTIONS ON LATE CHARGES AND

20 REINSTATEMENT FEES

21 [Sections 92.056-92.100 reserved for expansion]

22 SUBCHAPTER C. REPOSSESSION AND REINSTATEMENT

23 Sec. 92.101. MERCHANT'S REPOSSESSION RIGHT

24 Sec. 92.102. EFFECT OF REPOSSESSION DURING

25 REINSTATEMENT PERIOD

26 Sec. 92.103. EFFECT ON REINSTATEMENT PERIOD OF

27 MERCHANDISE RETURN

1 Sec. 92.104. MERCHANT'S DUTIES ON REINSTATEMENT

2 [Sections 92.105-92.150 reserved for expansion]

3 SUBCHAPTER D. LOSS DAMAGE WAIVERS

4 Sec. 92.151. CONTRACT FOR WAIVER

5 Sec. 92.152. CHARGE FOR WAIVER

6 Sec. 92.153. RESTRICTIONS ON MERCHANT CONCERNING

7 WAIVER

8 Sec. 92.154. REQUIRED NOTICE IN WAIVER

9 Sec. 92.155. STATEMENT OF TOTAL CHARGE

10 Sec. 92.156. AUTHORIZED EXCLUSIONS

11 Sec. 92.157. RELATIONSHIP TO INSURANCE

12 Sec. 92.158. RULES FOR REVIEW OF CERTAIN CONTRACTS

13 Sec. 92.159. FEES

14 Sec. 92.160. ADMINISTRATIVE ENFORCEMENT OF SUBCHAPTER

15 [Sections 92.161-92.200 reserved for expansion]

16 SUBCHAPTER E. CIVIL ENFORCEMENT

17 Sec. 92.201. ACTION FOR VIOLATION OF CHAPTER

18 Sec. 92.202. DECEPTIVE TRADE PRACTICE

19 CHAPTER 92. RENTAL-PURCHASE AGREEMENTS

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 92.001. DEFINITIONS. In this chapter:

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

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

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

1 property under a rental-purchase agreement.

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

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

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

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

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

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

20 (B) permits the consumer to become the owner of
21 the merchandise. (Bus. & Com. Code, Secs. 35.71(1), (3), (3-a),
22 (4), (5), (6), 35.722(a).)

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

27 (1) that the transaction advertised is a

1 rental-purchase agreement;

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

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

7 [Sections 92.003-92.050 reserved for expansion]

8 SUBCHAPTER B. FORM AND CONTENT OF AGREEMENTS

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

11 (1) plain English; and

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

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

16 (c) A disclosure required by this chapter must be printed or
17 typed in each rental-purchase agreement in a size equal to at least
18 10-point boldfaced type.

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

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

25 (1) whether the merchandise is new or used;

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

1 agreement;

2 (3) the amount and timing of payments;

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

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

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

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

13 (b) Notice of the right to reinstate the agreement must be
14 disclosed in the agreement. (Bus. & Com. Code, Secs. 35.71(2),
15 35.72(f) (part), (g).)

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

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

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

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

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

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

3 (1) require a consumer to:

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

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

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

11 (2) require a confession of judgment;

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

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

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

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

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

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

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

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

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

5 (A) \$10; or

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

8 [Sections 92.056-92.100 reserved for expansion]

9 SUBCHAPTER C. REPOSSESSION AND REINSTATEMENT

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

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

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

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

27 (1) the same merchandise; or

1 (2) substitute merchandise of comparable quality and
2 condition.

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

7 [Sections 92.105-92.150 reserved for expansion]

8 SUBCHAPTER D. LOSS DAMAGE WAIVERS

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

12 Sec. 92.152. CHARGE FOR WAIVER. A merchant may charge a
13 periodic fee for a loss damage waiver in an amount not to exceed 10
14 percent of the periodic rental payment. (Bus. & Com. Code, Sec.
15 35.721(e).)

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

- 18 (1) sell a loss damage waiver unless:
19 (A) the department has approved the form of the
20 contract containing the waiver; and
21 (B) the consumer agrees to the waiver in writing;
22 or

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) the review of a contract form under Section
4 92.158; and

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

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

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

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

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

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

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

27 [Sections 92.161-92.200 reserved for expansion]

1 SUBCHAPTER E. CIVIL ENFORCEMENT

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

5 (1) actual damages;

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

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

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

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

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

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

20 (B) the agreement otherwise complies with this
21 chapter.

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

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

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

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

4 [Chapters 93-100 reserved for expansion]

5 SUBTITLE C. BUSINESS OPERATIONS

6 CHAPTER 101. INTERNATIONAL MATCHMAKING ORGANIZATIONS

7 Sec. 101.001. DEFINITIONS

8 Sec. 101.002. PROVIDING CRIMINAL HISTORY, MARITAL
9 HISTORY, AND BASIC RIGHTS INFORMATION

10 Sec. 101.003. PROVIDING ADDITIONAL CRIMINAL HISTORY,
11 MARITAL HISTORY, AND BASIC RIGHTS
12 INFORMATION

13 Sec. 101.004. OBTAINING CRIMINAL HISTORY RECORD
14 INFORMATION AND MARITAL HISTORY
15 INFORMATION

16 Sec. 101.005. CIVIL PENALTY

17 CHAPTER 101. INTERNATIONAL MATCHMAKING ORGANIZATIONS

18 Sec. 101.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

10 (B) selecting photographs; or

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

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

18 (6) "Recruit" means a person who:

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

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

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

1 organization's clients and with basic rights information.

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

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

4 (2) be displayed in a manner that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) the amount necessary to deter future violations.

27 (c) The attorney general or the appropriate district or

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

- 3 (1) Travis County; or
4 (2) a county in which any part of the violation occurs.

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

10 CHAPTER 102. SEXUALLY ORIENTED BUSINESSES

11 Sec. 102.001. DEFINITIONS

12 Sec. 102.002. PROHIBITION ON CERTAIN ACTIVITIES BY SEX
13 OFFENDER IN RELATION TO BUSINESS

14 Sec. 102.003. PROHIBITION ON CERTAIN ACTIVITIES BY
15 BUSINESS IN RELATION TO SEX OFFENDER

16 Sec. 102.004. INJUNCTION OR OTHER RELIEF

17 Sec. 102.005. CRIMINAL PENALTIES

18 CHAPTER 102. SEXUALLY ORIENTED BUSINESSES

19 Sec. 102.001. DEFINITIONS. In this chapter:

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

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

27 Sec. 102.002. PROHIBITION ON CERTAIN ACTIVITIES BY SEX

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

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

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

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

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

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

14 Sec. 102.004. INJUNCTION OR OTHER RELIEF. (a) The attorney
15 general or appropriate district or county attorney, in the name of
16 the state, may bring an action for an injunction or other process
17 against a person who violates or threatens to violate Section
18 102.002 or 102.003.

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

20 (1) Travis County; or

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

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

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

1 commits an offense if the sex offender violates Section 102.002.

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

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

6 CHAPTER 103. APPRAISALS IMPROPERLY INDUCED BY MORTGAGE LENDERS

7 Sec. 103.001. DEFINITIONS

8 Sec. 103.002. CRIMINAL PENALTY

9 CHAPTER 103. APPRAISALS IMPROPERLY INDUCED BY MORTGAGE LENDERS

10 Sec. 103.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

8 CHAPTER 104. RESTRICTIONS ON CHARGES BY MOTOR FUEL FRANCHISORS

9 Sec. 104.001. DEFINITIONS

10 Sec. 104.002. PROHIBITED FEES, CHARGES, AND DISCOUNTS

11 Sec. 104.003. CIVIL ACTION

12 CHAPTER 104. RESTRICTIONS ON CHARGES BY MOTOR FUEL FRANCHISORS

13 Sec. 104.001. DEFINITIONS. In this chapter:

14 (1) "Franchise":

15 (A) includes:

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

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

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

1 transfer or assignment regardless of the franchise provisions; and

2 (B) does not include a contract:

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

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

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

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

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

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

16 (B) usable as a propellant of a motor vehicle.

17 (V.A.C.S. Art. 8612, Secs. 1(1), (2), (3), (5).)

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

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

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

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

7 (c) A franchisor may require a franchisee to pay the fee,
8 charge, or discount if the franchisor, in consideration of
9 competitive prices in the relevant market, has adjusted the
10 wholesale prices charged or rebates credited to franchisees for
11 motor fuel by amounts that on average for franchisees in this state
12 substantially offset the fee, charge, or discount. (V.A.C.S. Art.
13 8612, Secs. 1(4), 2.)

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

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

23 (1) the amount of actual damages;

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

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

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

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

10 CHAPTER 105. REFUELING SERVICES FOR PERSONS WITH DISABILITIES

11 Sec. 105.001. DEFINITIONS

12 Sec. 105.002. APPLICABILITY OF CHAPTER

13 Sec. 105.003. REFUELING SERVICES

14 Sec. 105.004. NOTICE

15 Sec. 105.005. OFFENSE; PENALTY

16 Sec. 105.006. ENFORCEMENT

17 CHAPTER 105. REFUELING SERVICES FOR PERSONS WITH DISABILITIES

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

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

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

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

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

7 (b) This chapter does not apply to:

8 (1) a service station or other facility that:

9 (A) never provides pump island service; and

10 (B) has only remotely controlled pumps; or

11 (2) a refueling service used to provide liquefied gas,
12 as defined by Section 162.001, Tax Code. (V.A.C.S. Art. 8613, Sec.
13 3.)

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

18 (1) a license plate issued under Section 504.201 or
19 504.203, Transportation Code; or

20 (2) a disabled parking placard issued under Section
21 681.004, Transportation Code.

22 (b) The price charged for motor vehicle fuel provided under
23 Subsection (a) may not exceed the price the service station would
24 otherwise generally charge the public for the purchase of motor
25 vehicle fuel without refueling service. (V.A.C.S. Art. 8613, Sec.
26 2.)

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

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

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

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

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

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

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

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

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

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

21 TITLE 6. SALE OR TRANSFER OF GOODS

22 CHAPTER 201. SALE OF ITEMS AT FLEA MARKETS

23 Sec. 201.001. DEFINITION

24 Sec. 201.002. INAPPLICABILITY OF CHAPTER TO CERTAIN

25 ITEMS

26 Sec. 201.003. SALE OF CERTAIN ITEMS PROHIBITED

1 Sec. 201.004. FRAUDULENT AUTHORIZATION FOR SALE OF
2 CERTAIN ITEMS AT RETAIL

3 Sec. 201.005. PROVISION OF BOOTH OR SIMILAR SPACE NOT
4 AN OFFENSE

5 Sec. 201.006. INVESTIGATION RECORDS REQUIRED

6 CHAPTER 201. SALE OF ITEMS AT FLEA MARKETS

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

12 Sec. 201.002. INAPPLICABILITY OF CHAPTER TO CERTAIN ITEMS.
13 This chapter does not apply to the sale or offer for sale of a
14 nutritional supplement or vitamin. (Bus. & Com. Code, Sec.
15 35.55(h).)

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

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

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

23 (3) contact lenses, including disposable contact
24 lenses.

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

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

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

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

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

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

11 (e) The penalty provided by this section is in addition to
12 any other sanction provided by law. (Bus. & Com. Code, Secs.
13 35.55(b), (d), (f).)

14 Sec. 201.004. FRAUDULENT AUTHORIZATION FOR SALE OF CERTAIN
15 ITEMS AT RETAIL. (a) A person commits an offense if the person
16 provides to another person an authorization under Section
17 201.003(b) and:

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

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

22 (b) An offense under this section is a misdemeanor
23 punishable by a fine not to exceed \$100. (Bus. & Com. Code, Secs.
24 35.55(e), (f).)

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

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

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

6 CHAPTER 202. SALES OF MOTOR VEHICLES WITH STOPLAMP COVERINGS

7 Sec. 202.001. SALE OF MOTOR VEHICLE WITH CERTAIN

8 STOPLAMP COVERING PROHIBITED

9 CHAPTER 202. SALES OF MOTOR VEHICLES WITH STOPLAMP COVERINGS

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

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

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

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

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

1 CHAPTER 203. EXPORTING ARTICLES WITHOUT INSPECTION

2 Sec. 203.001. CRIMINAL PENALTY FOR EXPORTING ARTICLES
3 WITHOUT REQUIRED INSPECTION

4 CHAPTER 203. EXPORTING ARTICLES WITHOUT INSPECTION

5 Sec. 203.001. CRIMINAL PENALTY FOR EXPORTING ARTICLES
6 WITHOUT REQUIRED INSPECTION. (a) A person commits an offense if
7 the person:

8 (1) exports from this state, or ships for the purpose
9 of exportation to a state other than this state or to a foreign
10 port, an article of commerce that by law of this state is required
11 to be inspected by a public inspector; and

12 (2) does not have the article inspected as required by
13 law.

14 (b) An offense under this section is a misdemeanor
15 punishable by a fine not to exceed \$100. (Bus. & Com. Code, Sec.
16 35.57.)

17 TITLE 7. RECEIPTS, DOCUMENTS OF TITLE, AND OTHER INSTRUMENTS

18 CHAPTER 251. WAREHOUSE RECEIPTS

19 Sec. 251.001. DEFINITIONS

20 Sec. 251.002. WAREHOUSEMAN ISSUING FRAUDULENT WAREHOUSE
21 RECEIPT

22 Sec. 251.003. WAREHOUSEMAN FAILING TO STATE
23 WAREHOUSEMAN'S OWNERSHIP OF GOODS ON
24 RECEIPT

25 Sec. 251.004. WAREHOUSEMAN ISSUING WAREHOUSE RECEIPT
26 WITHOUT CONTROL OF GOODS

1 Sec. 251.005. WAREHOUSEMAN ISSUING DUPLICATE OR
2 ADDITIONAL WAREHOUSE RECEIPT

3 Sec. 251.006. WAREHOUSEMAN WRONGFULLY DELIVERING GOODS

4 Sec. 251.007. FAILURE TO DISCLOSE LACK OF OWNERSHIP OF
5 GOODS

6 Sec. 251.008. FAILURE TO DISCLOSE EXISTENCE OF LIEN ON
7 GOODS

8 CHAPTER 251. WAREHOUSE RECEIPTS

9 Sec. 251.001. DEFINITIONS. In this chapter:

10 (1) "Goods" means all things treated as movable for
11 purposes of a contract of storage or transportation.

12 (2) "Issue" includes aiding in the issuance of a
13 warehouse receipt.

14 (3) "Warehouse receipt" means a receipt issued by a
15 warehouseman.

16 (4) "Warehouseman" means a person engaged in the
17 business of storing goods for hire. The term includes an officer,
18 agent, or employee of a warehouseman. (Bus. & Com. Code, Sec.
19 35.27; New.)

20 Sec. 251.002. WAREHOUSEMAN ISSUING FRAUDULENT WAREHOUSE
21 RECEIPT. (a) A warehouseman may not, with intent to defraud, issue
22 a warehouse receipt that contains a false statement.

23 (b) A warehouseman who violates this section commits an
24 offense. An offense under this section is a misdemeanor punishable
25 by:

26 (1) confinement in the county jail for a term of not
27 more than one year;

- 1 (2) a fine not to exceed \$1,000; or
2 (3) both the fine and confinement. (Bus. & Com. Code,
3 Sec. 35.28.)

4 Sec. 251.003. WAREHOUSEMAN FAILING TO STATE WAREHOUSEMAN'S
5 OWNERSHIP OF GOODS ON RECEIPT. (a) A warehouseman may not
6 knowingly issue a negotiable warehouse receipt describing goods the
7 warehouseman owns, whether solely, jointly, or in common, and is
8 storing, unless the warehouseman states the warehouseman's
9 ownership of the goods on the receipt.

10 (b) A warehouseman who violates this section commits an
11 offense. An offense under this section is a misdemeanor punishable
12 by:

13 (1) confinement in the county jail for a term of not
14 more than one year; or

15 (2) a fine not to exceed \$1,000. (Bus. & Com. Code,
16 Sec. 35.29.)

17 Sec. 251.004. WAREHOUSEMAN ISSUING WAREHOUSE RECEIPT
18 WITHOUT CONTROL OF GOODS. (a) A warehouseman may not issue a
19 warehouse receipt for goods if the warehouseman knows at the time of
20 issuance that the goods described in the receipt are not under the
21 warehouseman's control.

22 (b) A warehouseman who violates this section commits an
23 offense. An offense under this section is a felony punishable by:

24 (1) imprisonment in the Texas Department of Criminal
25 Justice for a term of not more than five years;

26 (2) a fine not to exceed \$5,000; or

27 (3) both the fine and imprisonment. (Bus. & Com. Code,

1 Sec. 35.30.)

2 Sec. 251.005. WAREHOUSEMAN ISSUING DUPLICATE OR ADDITIONAL
3 WAREHOUSE RECEIPT. (a) A warehouseman may not issue a duplicate or
4 additional negotiable warehouse receipt for goods if the
5 warehouseman knows at the time of issuance that a previously issued
6 negotiable warehouse receipt describing the goods is outstanding
7 and uncanceled.

8 (b) This section does not apply if:

9 (1) the word "duplicate" is plainly placed on the
10 duplicate or additional negotiable warehouse receipt; or

11 (2) goods described in the outstanding and uncanceled
12 negotiable warehouse receipt were delivered under a court order on
13 proof that the receipt was lost or destroyed.

14 (c) A warehouseman who violates this section commits an
15 offense. An offense under this section is a felony punishable by:

16 (1) imprisonment in the Texas Department of Criminal
17 Justice for a term of not more than five years;

18 (2) a fine not to exceed \$5,000; or

19 (3) both the fine and imprisonment. (Bus. & Com. Code,
20 Sec. 35.31.)

21 Sec. 251.006. WAREHOUSEMAN WRONGFULLY DELIVERING GOODS.

22 (a) A warehouseman may not knowingly deliver goods that are
23 described in a negotiable warehouse receipt and stored with the
24 warehouseman, unless the receipt is surrendered to the warehouseman
25 at or before the time the warehouseman delivers the goods.

26 (b) This section does not apply if the goods are:

27 (1) delivered under a court order on proof that the

1 negotiable warehouse receipt describing the goods was lost or
2 destroyed;

3 (2) lawfully sold to satisfy a warehouseman's lien; or

4 (3) disposed of because of the perishable or hazardous
5 nature of the goods.

6 (c) A warehouseman who violates this section commits an
7 offense. An offense under this section is a misdemeanor punishable
8 by:

9 (1) confinement in the county jail for a term of not
10 more than one year;

11 (2) a fine not to exceed \$1,000; or

12 (3) both the fine and confinement. (Bus. & Com. Code,
13 Sec. 35.32.)

14 Sec. 251.007. FAILURE TO DISCLOSE LACK OF OWNERSHIP OF
15 GOODS. (a) A person who obtains a negotiable warehouse receipt
16 describing goods the person does not own may not, with intent to
17 defraud, negotiate the receipt for value without disclosing the
18 person's lack of ownership.

19 (b) A person who violates this section commits an offense.
20 An offense under this section is a misdemeanor punishable by:

21 (1) confinement in the county jail for a term of not
22 more than one year;

23 (2) a fine not to exceed \$1,000; or

24 (3) both the fine and confinement. (Bus. & Com. Code,
25 Sec. 35.33 (part).)

26 Sec. 251.008. FAILURE TO DISCLOSE EXISTENCE OF LIEN ON
27 GOODS. (a) A person who obtains a negotiable warehouse receipt

1 describing goods subject to a lien may not, with intent to defraud,
2 negotiate the receipt for value without disclosing the lien's
3 existence.

4 (b) A person who violates this section commits an offense.
5 An offense under this section is a misdemeanor punishable by:

6 (1) confinement in the county jail for a term of not
7 more than one year;

8 (2) a fine not to exceed \$1,000; or

9 (3) both the fine and confinement. (Bus. & Com. Code,
10 Sec. 35.33 (part).)

11 CHAPTER 252. BILLS OF LADING

12 Sec. 252.001. DEFINITIONS

13 Sec. 252.002. DUTIES OF RAILROAD COMMISSION

14 Sec. 252.003. AGENT WRONGFULLY FAILING OR REFUSING TO
15 ISSUE BILL OF LADING

16 Sec. 252.004. AGENT ISSUING FRAUDULENT BILL OF LADING

17 Sec. 252.005. AGENT ISSUING ORDER BILL OF LADING IN
18 DUPLICATE OR SET OF PARTS

19 Sec. 252.006. FRAUDULENTLY INDUCING ISSUANCE OF BILL
20 OF LADING

21 Sec. 252.007. FRAUDULENTLY NEGOTIATING OR TRANSFERRING
22 BILL OF LADING

23 CHAPTER 252. BILLS OF LADING

24 Sec. 252.001. DEFINITIONS. In this chapter:

25 (1) "Agent" includes an officer, employee, or
26 receiver.

27 (2) "Bill of lading" means a document evidencing the

1 receipt of goods for shipment issued by a person engaged in the
2 business of transporting or forwarding goods. The term includes an
3 air consignment note, air waybill, or other document for air
4 transportation comparable to a bill of lading for marine or rail
5 transportation.

6 (3) "Goods" means all things treated as movable for
7 purposes of a contract of storage or transportation. (Bus. & Com.
8 Code, Sec. 35.14 (part).)

9 Sec. 252.002. DUTIES OF RAILROAD COMMISSION. (a) In this
10 section, "common carrier" does not include a pipeline company or
11 express company.

12 (b) The Railroad Commission of Texas shall:

13 (1) prescribe forms, terms, and conditions for
14 authenticating, certifying, or validating bills of lading issued by
15 a common carrier;

16 (2) regulate the manner by which a common carrier
17 issues bills of lading; and

18 (3) take other action necessary to carry out the
19 purposes of Chapter 7.

20 (c) After giving reasonable notice to interested common
21 carriers and to the public, the railroad commission may amend a rule
22 adopted under Subsection (b). (Bus. & Com. Code, Secs. 35.14
23 (part), 35.15.)

24 Sec. 252.003. AGENT WRONGFULLY FAILING OR REFUSING TO ISSUE
25 BILL OF LADING. (a) In this section, "common carrier" does not
26 include a pipeline company or express company.

27 (b) An agent of a common carrier may not after lawful demand

1 fail or refuse to issue a bill of lading in accordance with Chapter
2 7 or a rule of the railroad commission.

3 (c) An agent who violates this section commits an offense.
4 An offense under this section is a misdemeanor punishable by:

5 (1) confinement in the county jail for a term of not
6 more than six months;

7 (2) a fine not to exceed \$200; or

8 (3) both the fine and confinement. (Bus. & Com. Code,
9 Secs. 35.14 (part), 35.16.)

10 Sec. 252.004. AGENT ISSUING FRAUDULENT BILL OF LADING. (a)
11 In this section, "common carrier" does not include a pipeline
12 company or express company.

13 (b) An agent of a common carrier may not with intent to
14 defraud a person:

15 (1) issue a bill of lading;

16 (2) incorrectly describe goods or the quantity of
17 goods in a bill of lading; or

18 (3) issue a bill of lading without authority.

19 (c) An agent who violates this section commits an offense.
20 An offense under this section is a felony punishable by
21 imprisonment in the Texas Department of Criminal Justice for a term
22 of not more than 10 years or less than two years. (Bus. & Com. Code,
23 Secs. 35.14 (part), 35.17.)

24 Sec. 252.005. AGENT ISSUING ORDER BILL OF LADING IN
25 DUPLICATE OR SET OF PARTS. (a) Except where customary in overseas
26 transportation, an agent of a common carrier may not knowingly
27 issue or aid in issuing an order bill of lading in duplicate or in a

1 set of parts.

2 (b) An agent who violates this section commits an offense.
3 An offense under this section is a felony punishable by:

4 (1) imprisonment in the Texas Department of Criminal
5 Justice for a term of not more than five years; and

6 (2) a fine not to exceed \$5,000. (Bus. & Com. Code,
7 Sec. 35.18.)

8 Sec. 252.006. FRAUDULENTLY INDUCING ISSUANCE OF BILL OF
9 LADING. (a) A person may not, with intent to defraud, induce an
10 agent of a common carrier to:

11 (1) issue to the person a bill of lading; or

12 (2) materially misrepresent in a bill of lading issued
13 on behalf of the common carrier the quantity of goods described in
14 the bill of lading.

15 (b) A person who violates this section commits an offense.
16 An offense under this section is a felony punishable by
17 imprisonment in the Texas Department of Criminal Justice for a term
18 of not more than five years or less than two years. (Bus. & Com.
19 Code, Sec. 35.20.)

20 Sec. 252.007. FRAUDULENTLY NEGOTIATING OR TRANSFERRING
21 BILL OF LADING. (a) A person may not, with intent to defraud,
22 negotiate or transfer a bill of lading that:

23 (1) is issued in violation of Chapter 7; or

24 (2) contains a false, material statement of fact.

25 (b) A person who violates this section commits an offense.
26 An offense under this section is a felony punishable by
27 imprisonment in the Texas Department of Criminal Justice for a term

1 of not more than 10 years. (Bus. & Com. Code, Sec. 35.21.)

2 CHAPTER 253. PROTESTED OUT-OF-STATE DRAFTS

3 Sec. 253.001. DAMAGES ON PROTESTED OUT-OF-STATE DRAFTS

4 CHAPTER 253. PROTESTED OUT-OF-STATE DRAFTS

5 Sec. 253.001. DAMAGES ON PROTESTED OUT-OF-STATE DRAFTS.

6 The holder of a protested draft is entitled to damages in an amount
7 equal to 10 percent of the amount of the draft, plus interest and
8 the costs of suit, if:

9 (1) the draft was drawn by a merchant in this state on
10 the merchant's agent or factor outside this state; and

11 (2) the drawer's or indorser's liability on the draft
12 has been fixed. (Bus. & Com. Code, Sec. 35.39.)

13 CHAPTER 254. NOTE OR LIEN IDENTIFYING A PATENT RIGHT

14 Sec. 254.001. IDENTIFICATION OF PATENT RIGHT

15 Sec. 254.002. FAILURE TO IDENTIFY PATENT RIGHT;

16 CRIMINAL PENALTY

17 CHAPTER 254. NOTE OR LIEN IDENTIFYING A PATENT RIGHT

18 Sec. 254.001. IDENTIFICATION OF PATENT RIGHT. (a) A note
19 or lien evidencing or securing the purchase price for a patent right
20 or patent right territory must contain on the face of the note or
21 lien a statement that the note or lien was given for a patent right
22 or patent right territory.

23 (b) The statement required by Subsection (a):

24 (1) is notice to a subsequent purchaser of the note or
25 lien of all equities between the original parties to the note or
26 lien; and

27 (2) subjects a subsequent holder of the note or lien to

1 all defenses available against the original parties to the note or
2 lien. (Bus. & Com. Code, Secs. 35.40(a), (b).)

3 Sec. 254.002. FAILURE TO IDENTIFY PATENT RIGHT; CRIMINAL
4 PENALTY. (a) A person selling a patent right or patent right
5 territory may not take a note or lien evidencing or securing the
6 purchase price for the patent right or patent right territory
7 without placing on the face of the note or lien the statement
8 required by Section 254.001(a).

9 (b) A person who violates this section commits an offense.
10 An offense under this section is a misdemeanor punishable by a fine
11 of not less than \$25 or more than \$200. (Bus. & Com. Code, Secs.
12 35.40(c), (d).)

13 TITLE 8. SECURITY INSTRUMENTS

14 CHAPTER 261. UTILITY SECURITY INSTRUMENTS

15 Sec. 261.001. DEFINITIONS

16 Sec. 261.002. ACT CONSTITUTING FILING

17 Sec. 261.003. APPLICABILITY OF CHAPTER

18 Sec. 261.004. FILING UTILITY SECURITY INSTRUMENT WITH
19 SECRETARY OF STATE: PERFECTION AND
20 NOTICE

21 Sec. 261.005. DURATION OF PERFECTION AND NOTICE

22 Sec. 261.006. PRIORITIES AND REMEDIES APPLICABLE TO
23 CERTAIN PERFECTED SECURITY INTERESTS

24 Sec. 261.007. NOTICE OF NAME CHANGE, MERGER, OR
25 CONSOLIDATION

26 Sec. 261.008. ENDORSEMENT AND FILING BY SECRETARY OF
27 STATE; FEES

1 Sec. 261.009. CERTIFICATE OF FILING; FEE

2 Sec. 261.010. COPY OF FILED UTILITY SECURITY
3 INSTRUMENT; FEE

4 Sec. 261.011. NOTICE OF UTILITY SECURITY INSTRUMENT
5 AFFECTING REAL PROPERTY

6 CHAPTER 261. UTILITY SECURITY INSTRUMENTS

7 Sec. 261.001. DEFINITIONS. (a) In this chapter:

8 (1) "Utility" means a person engaged in this state in:

9 (A) generating, transmitting, or distributing
10 and selling electric power;

11 (B) transporting, distributing, and selling,
12 through a local distribution system, natural or other gas for
13 domestic, commercial, industrial, or other use;

14 (C) owning or operating a pipeline to transmit or
15 sell natural or other gas, natural gas liquids, crude oil, or
16 petroleum products to another pipeline company or to a refinery,
17 local distribution system, municipality, or industrial consumer;

18 (D) providing telephone or telegraph service to
19 others;

20 (E) producing, transmitting, or distributing and
21 selling steam or water;

22 (F) operating a railroad; or

23 (G) providing sewer service to others.

24 (2) "Utility security instrument" means:

25 (A) a mortgage, deed of trust, security
26 agreement, or other instrument executed to secure payment of a
27 bond, note, or other obligation of a utility; or

1 (B) an instrument that supplements or amends an
2 instrument described by Paragraph (A), including a signed copy of
3 the instrument.

4 (b) The definitions in Chapters 1 and 9 apply to this
5 chapter. (Bus. & Com. Code, Sec. 35.01.)

6 Sec. 261.002. ACT CONSTITUTING FILING. For purposes of
7 this chapter, a utility security instrument is filed when it is
8 deposited for filing with the secretary of state. (New.)

9 Sec. 261.003. APPLICABILITY OF CHAPTER. A utility is
10 subject to the requirements and entitled to the benefits of this
11 chapter:

12 (1) only if the utility files with the secretary of
13 state a utility security instrument that states conspicuously on
14 its title page: "This Instrument Grants A Security Interest By A
15 Utility"; and

16 (2) only with respect to collateral covered by a
17 utility security instrument filed by the utility in accordance with
18 Subdivision (1). (Bus. & Com. Code, Secs. 35.015(1), (2).)

19 Sec. 261.004. FILING UTILITY SECURITY INSTRUMENT WITH
20 SECRETARY OF STATE: PERFECTION AND NOTICE. (a) Subject to
21 Subsection (b), the filing with the secretary of state of a utility
22 security instrument executed by a utility and described by Section
23 261.003(1) and payment of the filing fee prescribed by Section
24 261.008:

25 (1) constitute perfection of a security interest
26 created by the instrument in any personal property:

27 (A) in which a security interest may be perfected

1 by filing under Chapter 9, including any goods that are or will
2 become a fixture;

3 (B) that is located in this state; and

4 (C) that was owned by the utility when the
5 instrument was executed or is to be acquired by the utility after
6 the instrument is executed; and

7 (2) if the instrument is proven, acknowledged, or
8 certified as otherwise required by law for the recording of real
9 property mortgages, serve as notice to all persons of the existence
10 of the instrument and the security interest granted by the
11 instrument in any real property, or in any fixture on or to be
12 placed on the property, that:

13 (A) is located in this state; and

14 (B) was owned by the utility when the instrument
15 was executed or is to be acquired by the utility after the
16 instrument is executed.

17 (b) For perfection or notice under Subsection (a) to be
18 effective as to a particular item of property, the filed utility
19 security instrument must:

20 (1) identify the property by type, character, or
21 description if the property is presently owned personal property,
22 including a fixture, and for that purpose any description of
23 personal property or real property is sufficient, regardless of
24 whether specific, if it reasonably identifies what is described;

25 (2) provide a description of the property if the
26 property is presently owned real property; or

27 (3) if the property is to be acquired after the

1 instrument is executed, state conspicuously on its title page:
2 "This Instrument Contains After-Acquired Property Provisions."

3 (c) A filing under this section satisfies any requirement
4 of:

5 (1) a filing of the utility security instrument or a
6 financing statement in the office of a county clerk if that filing
7 would otherwise be necessary to perfect a security interest; and

8 (2) a recording of the utility security instrument in
9 the office of a county clerk if that recording would otherwise make
10 the instrument effective as to all creditors and subsequent
11 purchasers for valuable consideration without notice. (Bus. & Com.
12 Code, Secs. 35.02(a), (b), (c).)

13 Sec. 261.005. DURATION OF PERFECTION AND NOTICE. The
14 perfection and notice provided by the filing of a utility security
15 instrument under Section 261.004 take effect on the date of filing
16 and remain in effect without any renewal, refileing, or continuation
17 statement until the interest granted as security is released by the
18 filing of a termination statement, or a release of all or a part of
19 the property, signed by the secured party. (Bus. & Com. Code, Sec.
20 35.03.)

21 Sec. 261.006. PRIORITIES AND REMEDIES APPLICABLE TO CERTAIN
22 PERFECTED SECURITY INTERESTS. The provisions of Chapter 9 relating
23 to priorities and remedies apply to security interests in personal
24 property, including fixtures, perfected under Section 261.004.
25 (Bus. & Com. Code, Sec. 35.02(d).)

26 Sec. 261.007. NOTICE OF NAME CHANGE, MERGER, OR
27 CONSOLIDATION. (a) A utility that changes its name or merges or

1 consolidates after filing a utility security instrument under
2 Section 261.004 shall promptly file with the secretary of state a
3 written statement of the name change, merger, or consolidation.
4 The written statement must:

- 5 (1) be signed by the secured party and the utility;
6 (2) identify the appropriate utility security
7 instrument by file number; and
8 (3) state the name of the utility after the name
9 change, merger, or consolidation.

10 (b) Unless a written statement is filed under Subsection (a)
11 not later than four months after the effective date of the name
12 change, merger, or consolidations, the filing of a utility security
13 instrument before the name change, merger, or consolidation does
14 not constitute perfection or serve as notice under Section 261.004
15 of a security interest in property acquired by the utility more than
16 four months after the name change, merger, or consolidation. (Bus.
17 & Com. Code, Sec. 35.04.)

18 Sec. 261.008. ENDORSEMENT AND FILING BY SECRETARY OF STATE;
19 FEES. (a) The secretary of state shall endorse on a utility
20 security instrument and any statement of name change, merger, or
21 consolidation filed with the secretary of state:

- 22 (1) the day and hour of receipt; and
23 (2) the assigned file number.

24 (b) In the absence of other evidence, an endorsement under
25 Subsection (a) is conclusive proof of the time and fact of filing.

26 (c) The secretary of state shall file in adequate filing
27 devices and retain in the secretary of state's office all utility

1 security instruments and statements of name change, merger, or
2 consolidation filed with the secretary of state.

3 (d) The secretary of state shall charge a \$25 fee to:

4 (1) file and index:

5 (A) a utility security instrument;

6 (B) an instrument that supplements or amends a
7 utility security instrument; or

8 (C) a statement of name change, merger, or
9 consolidation; and

10 (2) stamp a copy of a document described by
11 Subdivision (1), provided by the secured party or the utility, to
12 indicate the date and place of filing. (Bus. & Com. Code, Sec.
13 35.05.)

14 Sec. 261.009. CERTIFICATE OF FILING; FEE. (a) On request
15 of any person, the secretary of state shall issue a certificate
16 that:

17 (1) indicates whether on the date and hour stated in
18 the request, there is on file any presently effective utility
19 security instrument naming a particular utility; and

20 (2) if there is, states:

21 (A) the date and hour the utility security
22 instrument was filed; and

23 (B) the names and addresses of each secured
24 party.

25 (b) The fee for a certificate under this section is:

26 (1) \$10, if the request for the certificate is in the
27 standard form prescribed by the secretary of state; or

1 (2) \$25, if the request is not in the standard form.
2 (Bus. & Com. Code, Sec. 35.06 (part).)

3 Sec. 261.010. COPY OF FILED UTILITY SECURITY INSTRUMENT;
4 FEE. (a) On request and payment of the fee prescribed by
5 Subsection (b), the secretary of state shall provide a person with a
6 copy of any filed utility security instrument.

7 (b) The fee for a copy under this section is \$1.50 per page,
8 but may not be less than \$5 or more than \$100 for each request
9 concerning a particular utility. (Bus. & Com. Code, Sec. 35.06
10 (part).)

11 Sec. 261.011. NOTICE OF UTILITY SECURITY INSTRUMENT
12 AFFECTING REAL PROPERTY. (a) If a utility security instrument
13 filed with the secretary of state under Section 261.004 grants a
14 security interest in real property owned by the utility, a notice of
15 utility security instrument affecting real property must be
16 recorded in the office of the county clerk in the county in which
17 the real property is located. The notice must state:

18 (1) the name of the utility that executed the utility
19 security instrument;

20 (2) that a utility security instrument affecting real
21 property in the county has been executed by the utility; and

22 (3) that the utility security instrument was filed,
23 and other security instruments may be on file, with the secretary of
24 state.

25 (b) A notice recorded under Subsection (a) is sufficient to
26 provide notice of any other security instrument filed with the
27 secretary of state that:

1 (1) was executed by the utility; and

2 (2) grants a security interest in any real property
3 located in the county in which the notice was recorded or in any
4 fixture on the property.

5 (c) The county clerk shall record and index a notice
6 described by Subsection (a) in the same records and indices as the
7 clerk records and indexes mortgages on real property.

8 (d) The county clerk shall maintain a separate index of
9 utility security instruments and continuation statements recorded
10 under prior law. (Bus. & Com. Code, Secs. 35.07(a), (b) (part),
11 (c), (d).)

12 TITLE 9. APPLICABILITY OF LAW TO COMMERCIAL TRANSACTIONS

13 CHAPTER 271. RIGHTS OF PARTIES TO CHOOSE LAW APPLICABLE

14 TO CERTAIN TRANSACTIONS

15 Sec. 271.001. DEFINITION

16 Sec. 271.002. SUBSTANTIALLY SIMILAR OR RELATED
17 TRANSACTIONS

18 Sec. 271.003. CONFLICT-OF-LAWS RULES

19 Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF
20 TRANSACTION TO PARTICULAR JURISDICTION

21 Sec. 271.005. LAW GOVERNING ISSUE RELATING TO
22 QUALIFIED TRANSACTION

23 Sec. 271.006. LAW GOVERNING INTERPRETATION OR
24 CONSTRUCTION OF AGREEMENT RELATING TO
25 QUALIFIED TRANSACTION

1 Sec. 271.007. LAW GOVERNING VALIDITY OR ENFORCEABILITY
2 OF TERM OF AGREEMENT RELATING TO
3 QUALIFIED TRANSACTION

4 Sec. 271.008. APPLICABILITY TO CERTAIN REAL PROPERTY
5 TRANSACTIONS; EXCEPTIONS

6 Sec. 271.009. EXCEPTION: MARRIAGE OR ADOPTION

7 Sec. 271.010. EXCEPTION: DECEDENT'S ESTATE

8 Sec. 271.011. EXCEPTION: OTHER STATUTE SPECIFYING
9 GOVERNING LAW

10 CHAPTER 271. RIGHTS OF PARTIES TO CHOOSE LAW APPLICABLE
11 TO CERTAIN TRANSACTIONS

12 Sec. 271.001. DEFINITION. In this chapter, "qualified
13 transaction" means a transaction under which a party:

14 (1) pays or receives, or is obligated to pay or is
15 entitled to receive, consideration with an aggregate value of at
16 least \$1 million; or

17 (2) lends, advances, borrows, or receives, or is
18 obligated to lend or advance or is entitled to borrow or receive,
19 money or credit with an aggregate value of at least \$1 million.
20 (Bus. & Com. Code, Sec. 35.51(a)(2).)

21 Sec. 271.002. SUBSTANTIALLY SIMILAR OR RELATED
22 TRANSACTIONS. For purposes of this chapter, two or more
23 substantially similar or related transactions are considered a
24 single transaction if the transactions:

25 (1) are entered into contemporaneously; and

26 (2) have at least one common party. (Bus. & Com. Code,
27 Sec. 35.51(a)(1).)

1 Sec. 271.003. CONFLICT-OF-LAWS RULES. For purposes of this
2 chapter, a reference to the law of a particular jurisdiction does
3 not include that jurisdiction's conflict-of-laws rules. (Bus. &
4 Com. Code, Secs. 35.51(b) (part), (c) (part), (e) (part).)

5 Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF
6 TRANSACTION TO PARTICULAR JURISDICTION. (a) For purposes of this
7 chapter, a transaction bears a reasonable relation to a particular
8 jurisdiction if the transaction, the subject matter of the
9 transaction, or a party to the transaction is reasonably related to
10 that jurisdiction.

11 (b) A transaction bears a reasonable relation to a
12 particular jurisdiction if:

13 (1) a party to the transaction is a resident of that
14 jurisdiction;

15 (2) a party to the transaction has the party's place of
16 business or, if that party has more than one place of business, the
17 party's chief executive office or an office from which the party
18 conducts a substantial part of the negotiations relating to the
19 transaction, in that jurisdiction;

20 (3) all or part of the subject matter of the
21 transaction is located in that jurisdiction;

22 (4) a party to the transaction is required to perform
23 in that jurisdiction a substantial part of the party's obligations
24 relating to the transaction, such as delivering payments; or

25 (5) a substantial part of the negotiations relating to
26 the transaction occurred in that jurisdiction and an agreement
27 relating to the transaction was signed in that jurisdiction by a

1 party to the transaction. (Bus. & Com. Code, Sec. 35.51(d).)

2 Sec. 271.005. LAW GOVERNING ISSUE RELATING TO QUALIFIED
3 TRANSACTION. (a) Except as provided by Section 271.007,
4 271.008(b), 271.009, 271.010, or 271.011 or by Chapter 272, the law
5 of a particular jurisdiction governs an issue relating to a
6 qualified transaction if:

7 (1) the parties to the transaction agree in writing
8 that the law of that jurisdiction governs the issue, including the
9 validity or enforceability of an agreement relating to the
10 transaction or a provision of the agreement; and

11 (2) the transaction bears a reasonable relation to
12 that jurisdiction.

13 (b) The law of a particular jurisdiction governs an issue
14 described by this section regardless of whether the application of
15 that law is contrary to a fundamental or public policy of this state
16 or of any other jurisdiction. (Bus. & Com. Code, Sec. 35.51(b)
17 (part).)

18 Sec. 271.006. LAW GOVERNING INTERPRETATION OR CONSTRUCTION
19 OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. Except as provided
20 by Section 271.008(b), 271.009, 271.010, or 271.011 and by Chapter
21 272, if the parties to a qualified transaction agree in writing that
22 the law of a particular jurisdiction governs the interpretation or
23 construction of an agreement relating to the transaction or a
24 provision of the agreement, the law of that jurisdiction governs
25 that issue regardless of whether the transaction bears a reasonable
26 relation to that jurisdiction. (Bus. & Com. Code, Sec. 35.51(c)
27 (part).)

1 Sec. 271.007. LAW GOVERNING VALIDITY OR ENFORCEABILITY OF
2 TERM OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. (a) Except as
3 provided by Section 271.008(b), 271.009, 271.010, or 271.011 or by
4 Chapter 272, this section applies if:

5 (1) the parties to a qualified transaction agree in
6 writing that the law of a particular jurisdiction governs the
7 validity or enforceability of an agreement relating to the
8 transaction or a provision of the agreement;

9 (2) the transaction bears a reasonable relation to
10 that jurisdiction; and

11 (3) a term of the agreement or of that provision is
12 invalid or unenforceable under the law of that jurisdiction but is
13 valid or enforceable under the law of the jurisdiction that has the
14 most significant relation to the transaction, the subject matter of
15 the transaction, and the parties.

16 (b) If this section applies:

17 (1) the law of the jurisdiction that has the most
18 significant relation to the transaction, the subject matter of the
19 transaction, and the parties governs the validity or enforceability
20 of a term described by Subsection (a)(3); and

21 (2) the law of the jurisdiction that the parties agree
22 would govern the validity or enforceability of the agreement or
23 provision governs the validity or enforceability of the other terms
24 of the agreement or provision. (Bus. & Com. Code, Sec. 35.51(e)
25 (part).)

26 Sec. 271.008. APPLICABILITY TO CERTAIN REAL PROPERTY
27 TRANSACTIONS; EXCEPTIONS. (a) Sections 271.004-271.007 apply to

1 the determination of the law that governs an issue relating to a
2 transaction involving real property other than a matter described
3 by Subsection (b), including the validity or enforceability of an
4 indebtedness incurred in consideration for the transfer of, or the
5 payment of which is secured by a lien on, real property.

6 (b) Sections 271.004-271.007 do not apply to the
7 determination of the law that governs:

8 (1) whether a transaction transfers or creates an
9 interest in real property for security purposes or otherwise;

10 (2) the nature of an interest in real property that is
11 transferred or created by a transaction;

12 (3) the method for foreclosure of a lien on real
13 property;

14 (4) the nature of an interest in real property that
15 results from foreclosure; or

16 (5) the manner and effect of recording or failing to
17 record evidence of a transaction that transfers or creates an
18 interest in real property. (Bus. & Com. Code, Secs. 35.51(f)
19 (part), (g).)

20 Sec. 271.009. EXCEPTION: MARRIAGE OR ADOPTION. Sections
21 271.004-271.007 do not apply to the determination of the law that
22 governs:

23 (1) the validity of a marriage or an adoption;

24 (2) whether a marriage has been terminated; or

25 (3) the effect of a marriage on property owned by a
26 spouse at the time of the marriage or acquired by either spouse
27 during the marriage. (Bus. & Com. Code, Sec. 35.51(f) (part).)

1 Sec. 271.010. EXCEPTION: DECEDENT'S ESTATE. Sections
2 271.004-271.007 do not apply to the determination of the law that
3 governs:

- 4 (1) whether an instrument is a will;
5 (2) the rights of persons under a will; or
6 (3) the rights of persons in the absence of a will.
7 (Bus. & Com. Code, Sec. 35.51(f) (part).)

8 Sec. 271.011. EXCEPTION: OTHER STATUTE SPECIFYING
9 GOVERNING LAW. Sections 271.004-271.007 do not apply to the
10 determination of the law that governs an issue that another statute
11 of this state or a statute of the United States provides is governed
12 by the law of a particular jurisdiction. (Bus. & Com. Code, Sec.
13 35.51(f) (part).)

14 CHAPTER 272. LAW APPLICABLE TO CERTAIN CONTRACTS FOR CONSTRUCTION
15 OR REPAIR OF REAL PROPERTY IMPROVEMENTS

16 Sec. 272.001. VOIDABLE CONTRACT PROVISION

17 Sec. 272.002. CONTRACT PRINCIPALLY FOR CONSTRUCTION OR
18 REPAIR OF REAL PROPERTY IMPROVEMENTS

19 CHAPTER 272. LAW APPLICABLE TO CERTAIN CONTRACTS FOR CONSTRUCTION
20 OR REPAIR OF REAL PROPERTY IMPROVEMENTS

21 Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) This section
22 applies only to a contract that is principally for the construction
23 or repair of an improvement to real property located in this state.

24 (b) If a contract contains a provision making the contract
25 or any conflict arising under the contract subject to another
26 state's law, litigation in the courts of another state, or
27 arbitration in another state, that provision is voidable by the

1 party obligated by the contract to perform the construction or
2 repair. (Bus. & Com. Code, Sec. 35.52(a).)

3 Sec. 272.002. CONTRACT PRINCIPALLY FOR CONSTRUCTION OR
4 REPAIR OF REAL PROPERTY IMPROVEMENTS. (a) For purposes of this
5 chapter, a contract is principally for the construction or repair
6 of an improvement to real property located in this state if the
7 contract obligates a party, as the party's principal obligation
8 under the contract, to provide labor or labor and materials as a
9 general contractor or subcontractor for the construction or repair
10 of an improvement to real property located in this state.

11 (b) For purposes of this chapter, a contract is not
12 principally for the construction or repair of an improvement to
13 real property located in this state if the contract:

14 (1) is a partnership agreement or other agreement
15 governing an entity or trust;

16 (2) provides for a loan or other extension of credit
17 and the party promising to construct or repair the improvement is
18 doing so as part of the party's agreements with the lender or other
19 person who extends credit; or

20 (3) is for the management of real property or
21 improvements and the obligation to construct or repair the
22 improvement is part of that management.

23 (c) Subsections (a) and (b) do not provide an exclusive list
24 of the situations in which a contract is or is not principally for
25 the construction or repair of an improvement to real property
26 located in this state. (Bus. & Com. Code, Secs. 35.52(b), (c), (d).)

1 CHAPTER 273. LAW OR FORUM APPLICABLE TO CERTAIN CONTRACTS FOR
2 DISPOSITION OF GOODS

3 Sec. 273.001. CONTRACTS SUBJECT TO CHAPTER

4 Sec. 273.002. NOTICE OF APPLICABLE LAW OR FORUM

5 Sec. 273.003. FAILURE TO PROVIDE NOTICE

6 CHAPTER 273. LAW OR FORUM APPLICABLE TO CERTAIN CONTRACTS FOR
7 DISPOSITION OF GOODS

8 Sec. 273.001. CONTRACTS SUBJECT TO CHAPTER. This chapter
9 applies to a contract only if:

10 (1) the contract is for the sale, lease, exchange, or
11 other disposition for value of goods for the price, rental, or other
12 consideration of \$50,000 or less;

13 (2) any element of the contract's execution occurred
14 in this state;

15 (3) a party to the contract is:
16 (A) an individual resident of this state; or
17 (B) an association or corporation that is created
18 under the laws of this state or has its principal place of business
19 in this state; and

20 (4) Section 1.301 does not apply to the contract.
21 (Bus. & Com. Code, Sec. 35.53(a).)

22 Sec. 273.002. NOTICE OF APPLICABLE LAW OR FORUM. If a
23 contract contains a provision making the contract or any conflict
24 arising under the contract subject to another state's laws,
25 litigation in the courts of another state, or arbitration in
26 another state, that provision must be set out conspicuously in
27 print, type, or other form of writing that is boldfaced,

1 capitalized, underlined, or otherwise set out in such a manner that
2 a reasonable person against whom the provision may operate would
3 notice the provision. (Bus. & Com. Code, Sec. 35.53(b) (part).)

4 Sec. 273.003. FAILURE TO PROVIDE NOTICE. A contract
5 provision that does not comply with Section 273.002 is voidable by a
6 party against whom the provision is sought to be enforced. (Bus. &
7 Com. Code, Sec. 35.53(b) (part).)

8 CHAPTER 274. LAW APPLICABLE TO CONTRACT MADE OVER INTERNET

9 Sec. 274.001. DEFINITION

10 Sec. 274.002. APPLICABILITY OF CHAPTER; EXCEPTION

11 Sec. 274.003. STATE LAW GOVERNING CONTRACT; BURDEN OF
12 PROOF

13 Sec. 274.004. APPLICABILITY OF OTHER LAW TO CONTRACT

14 CHAPTER 274. LAW APPLICABLE TO CONTRACT MADE OVER INTERNET

15 Sec. 274.001. DEFINITION. In this chapter, "Internet"
16 means the largest nonproprietary nonprofit cooperative public
17 computer network, popularly known as the Internet. (Bus. & Com.
18 Code, Sec. 35.531(a).)

19 Sec. 274.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a)
20 Except as provided by Subsection (b), this chapter applies only to a
21 contract made solely over the Internet between a person located in
22 this state and a person located outside this state who does not
23 maintain an office or agent in this state for transacting business
24 in this state.

25 (b) This chapter does not apply to a contract to which
26 Chapter 271 applies. (Bus. & Com. Code, Secs. 35.531(b), (e)
27 (part).)

1 Sec. 274.003. STATE LAW GOVERNING CONTRACT; BURDEN OF
2 PROOF. (a) A contract is governed by the law of this state unless
3 each party to the contract who is located in this state:

4 (1) is given notice that the law of the state in which
5 another party to the contract is located applies to the contract;
6 and

7 (2) agrees to the application of that state's law.

8 (b) A person asserting that the law of another state governs
9 a contract has the burden of proving that notice was given and
10 agreement was obtained as specified by Subsection (a). (Bus. & Com.
11 Code, Secs. 35.531(c), (d).)

12 Sec. 274.004. APPLICABILITY OF OTHER LAW TO CONTRACT.
13 Section 1.031 and Chapter 273 do not apply to a contract to which
14 this chapter applies. (Bus. & Com. Code, Sec. 35.531(e) (part).)

15 TITLE 10. USE OF TELECOMMUNICATIONS

16 SUBTITLE A. TELEPHONES

17 CHAPTER 301. TELEPHONE SOLICITATION PRACTICES

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 301.001. DEFINITIONS

20 [Sections 301.002-301.050 reserved for expansion]

21 SUBCHAPTER B. PERMITTED AND PROHIBITED PRACTICES

22 Sec. 301.051. TELEPHONE SOLICITATION REQUIREMENTS

23 Sec. 301.052. CHARGES TO CONSUMER'S CREDIT CARD

24 ACCOUNT

25 [Sections 301.053-301.100 reserved for expansion]

1 SUBCHAPTER C. ENFORCEMENT

2 Sec. 301.101. INVESTIGATION BY ATTORNEY GENERAL'S
3 OFFICE

4 Sec. 301.102. INJUNCTIVE RELIEF

5 Sec. 301.103. CIVIL PENALTY; RESTITUTION

6 Sec. 301.104. CIVIL ACTION

7 Sec. 301.105. VENUE

8 CHAPTER 301. TELEPHONE SOLICITATION PRACTICES

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 301.001. DEFINITIONS. In this chapter:

11 (1) "Automated dial announcing device" means
12 automated equipment used for telephone solicitation or collection
13 that can:

14 (A) store telephone numbers to be called or
15 produce numbers to be called through use of a random or sequential
16 number generator; and

17 (B) convey, alone or in conjunction with other
18 equipment, a prerecorded or synthesized voice message to the number
19 called without the use of a live operator.

20 (2) "Consumer" means a person who is solicited to
21 purchase, lease, or receive a consumer good or service.

22 (3) "Consumer good or service" means:

23 (A) real property or tangible or intangible
24 personal property that is normally used for personal, family, or
25 household purposes, including:

26 (i) personal property intended to be
27 attached to or installed in any real property;

1 (ii) a cemetery lot; and
2 (iii) a time-share estate; or
3 (B) a service related to real or personal
4 property.

5 (4) "Consumer telephone call" means an unsolicited
6 call made to a residential telephone number by a telephone
7 solicitor to:

8 (A) solicit a sale of a consumer good or service;

9 (B) solicit an extension of credit for a consumer
10 good or service; or

11 (C) obtain information that will or may be used
12 to directly solicit a sale of a consumer good or service or to
13 extend credit for the sale.

14 (5) "Telephone solicitor" means a person who makes or
15 causes to be made a consumer telephone call, including a call made
16 by an automated dial announcing device. (Bus. & Com. Code, Sec.
17 37.01.)

18 [Sections 301.002-301.050 reserved for expansion]

19 SUBCHAPTER B. PERMITTED AND PROHIBITED PRACTICES

20 Sec. 301.051. TELEPHONE SOLICITATION REQUIREMENTS. (a)

21 This section does not apply to a consumer telephone call made:

22 (1) in response to the express request of the
23 consumer;

24 (2) primarily in connection with an existing debt or
25 contract for which payment or performance has not been completed at
26 the time of the call; or

27 (3) to a consumer with whom the telephone solicitor

1 has a prior or existing business relationship.

2 (b) A telephone solicitor may not make a consumer telephone
3 call to a consumer unless:

4 (1) the telephone solicitor, immediately after making
5 contact with the consumer to whom the call is made, identifies:

6 (A) himself or herself by name;

7 (B) the business on whose behalf the telephone
8 solicitor is calling; and

9 (C) the purpose of the call;

10 (2) the telephone solicitor makes the call after 12
11 noon and before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m.
12 on a weekday or a Saturday; and

13 (3) for those calls in which an automated dial
14 announcing device is used, the device disconnects the consumer's
15 telephone line within the period specified by Section 55.126,
16 Utilities Code, after either the telephone solicitor or the
17 consumer terminates the call. (Bus. & Com. Code, Sec. 37.02.)

18 Sec. 301.052. CHARGES TO CONSUMER'S CREDIT CARD ACCOUNT. A
19 person who sells consumer goods or services through the use of a
20 telephone solicitor may not make or submit a charge to a consumer's
21 credit card account unless the seller:

22 (1) provides that:

23 (A) the consumer may receive a full refund for
24 returning undamaged and unused goods or canceling services by
25 providing notice to the seller not later than the seventh day after
26 the date the consumer receives the goods or services; and

27 (B) the seller will process:

1 (i) a refund not later than the 30th day
2 after the date the seller receives the returned goods from the
3 consumer; or

4 (ii) a full refund not later than the 30th
5 day after the date the consumer cancels an order for the purchase of
6 services not performed or a pro rata refund for any services not yet
7 performed for the consumer;

8 (2) provides to the consumer a written contract fully
9 describing the goods or services being offered, the total price to
10 be charged, the name, address, and business telephone number of the
11 seller, and any terms affecting the sale and receives from the
12 consumer a signed copy of the contract; or

13 (3) is an organization that qualifies for an exemption
14 from federal income taxation under Section 501(c)(3), Internal
15 Revenue Code of 1986, and has obtained that exemption from the
16 Internal Revenue Service. (Bus. & Com. Code, Sec. 37.03.)

17 [Sections 301.053-301.100 reserved for expansion]

18 SUBCHAPTER C. ENFORCEMENT

19 Sec. 301.101. INVESTIGATION BY ATTORNEY GENERAL'S OFFICE.
20 The attorney general's office shall investigate a complaint
21 relating to a violation of this chapter. (Bus. & Com. Code, Sec.
22 37.04(a) (part).)

23 Sec. 301.102. INJUNCTIVE RELIEF. (a) The attorney
24 general's office may petition a district court for a temporary
25 restraining order to restrain a continuing violation of this
26 chapter.

27 (b) A district court, on petition of the attorney general's

1 office and on finding that a person is violating this chapter, may:

2 (1) issue an injunction prohibiting the person from
3 continuing the violation; or

4 (2) grant any other injunctive relief warranted by the
5 facts. (Bus. & Com. Code, Secs. 37.04(a) (part), (b).)

6 Sec. 301.103. CIVIL PENALTY; RESTITUTION. (a) A person who
7 knowingly violates this chapter is liable for a civil penalty of not
8 more than \$10,000 for each violation.

9 (b) In addition to bringing an action for injunctive relief
10 under Section 301.102, the attorney general's office may seek
11 restitution and petition a district court for the assessment of a
12 civil penalty as provided by this chapter. (Bus. & Com. Code, Secs.
13 37.04(a) (part), 37.05(a), (b).)

14 Sec. 301.104. CIVIL ACTION. A consumer injured by a
15 violation of this chapter may bring an action for recovery of
16 damages. The damages awarded may not be less than the amount the
17 consumer paid the person who sold the consumer goods or services
18 through the use of the telephone solicitor, plus reasonable
19 attorney's fees and court costs. (Bus. & Com. Code, Sec. 37.05(c).)

20 Sec. 301.105. VENUE. Venue for an action brought under this
21 chapter is in:

22 (1) the county in which the consumer telephone call
23 originated;

24 (2) the county in which the consumer telephone call
25 was received; or

26 (3) Travis County. (Bus. & Com. Code, Sec. 37.04(c).)

1 CHAPTER 302. REGULATION OF TELEPHONE SOLICITATION

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 302.001. DEFINITIONS

4 Sec. 302.002. MAKING TELEPHONE SOLICITATION

5 Sec. 302.003. LIBERAL CONSTRUCTION AND APPLICATION

6 Sec. 302.004. ATTEMPTED WAIVER VOID

7 [Sections 302.005-302.050 reserved for expansion]

8 SUBCHAPTER B. EXEMPTIONS

9 Sec. 302.051. BURDEN OF PROOF

10 Sec. 302.052. EXEMPTIONS APPLY ONLY TO SELLERS;

11 EXCEPTION

12 Sec. 302.053. EXEMPTION: PERSONS REGULATED BY OTHER

13 LAW

14 Sec. 302.054. EXEMPTION: PERSONS SELLING MEDIA

15 SUBSCRIPTIONS, CERTAIN MERCHANDISE, OR

16 ITEMS FROM CERTAIN CATALOGS

17 Sec. 302.055. EXEMPTION: EDUCATIONAL AND NONPROFIT

18 ORGANIZATIONS

19 Sec. 302.056. EXEMPTION: CERTAIN COMMERCIAL SALES

20 Sec. 302.057. EXEMPTION: PERSON SOLICITING FOOD SALES

21 Sec. 302.058. EXEMPTION: SOLICITATION OF FORMER OR

22 CURRENT CUSTOMERS

23 Sec. 302.059. EXEMPTION: PERSONS WHO MAKE CERTAIN

24 SALES PRESENTATIONS OR MAKE SALES AT

25 ESTABLISHED RETAIL LOCATIONS

1 Sec. 302.060. EXEMPTION: CERTAIN PERSONS PROVIDING
2 TELEPHONE SOLICITATION SERVICES
3 PREDOMINANTLY FOR EXEMPT PERSONS

4 Sec. 302.061. EXEMPTION: PERSONS CONDUCTING CERTAIN
5 ISOLATED TELEPHONE SOLICITATIONS

6 [Sections 302.062-302.100 reserved for expansion]

7 SUBCHAPTER C. REGISTRATION

8 Sec. 302.101. REGISTRATION CERTIFICATE REQUIRED

9 Sec. 302.102. FILING OF REGISTRATION STATEMENT; PUBLIC
10 INFORMATION

11 Sec. 302.103. ISSUANCE OF REGISTRATION CERTIFICATE

12 Sec. 302.104. EFFECTIVE DATE OF REGISTRATION
13 STATEMENT; RENEWAL

14 Sec. 302.105. ADDENDA REQUIREMENTS

15 Sec. 302.106. FILING FEE

16 Sec. 302.107. SECURITY REQUIREMENTS

17 Sec. 302.108. APPOINTMENT OF SECRETARY OF STATE AS
18 AGENT FOR SERVICE

19 [Sections 302.109-302.150 reserved for expansion]

20 SUBCHAPTER D. DISCLOSURES REQUIRED IN REGISTRATION STATEMENT

21 Sec. 302.151. DISCLOSURE OF CERTAIN NAMES, ADDRESSES,
22 TELEPHONE NUMBERS, AND ORGANIZATIONAL
23 INFORMATION

24 Sec. 302.152. DISCLOSURE OF CERTAIN CONVICTIONS,
25 PLEAS, JUDGMENTS, ORDERS,
26 BANKRUPTCIES, AND REORGANIZATIONS

27 Sec. 302.153. DISCLOSURE OF CERTAIN SALES INFORMATION

1 [Sections 302.154-302.200 reserved for expansion]

2 SUBCHAPTER E. ADDITIONAL INFORMATION FROM SELLER

3 Sec. 302.201. INFORMATION REQUIRED TO BE POSTED OR

4 AVAILABLE AT SELLER'S BUSINESS

5 LOCATION

6 Sec. 302.202. DISCLOSURES REQUIRED BEFORE PURCHASE

7 Sec. 302.203. REFERENCE TO COMPLIANCE WITH STATUTE

8 PROHIBITED

9 [Sections 302.204-302.250 reserved for expansion]

10 SUBCHAPTER F. OFFENSES

11 Sec. 302.251. VIOLATION OF CERTAIN PROVISIONS

12 Sec. 302.252. ACTING AS SALESPERSON FOR UNREGISTERED

13 SELLER

14 Sec. 302.253. REQUEST FOR CREDIT CARD ACCOUNT NUMBER

15 OR CHECKING ACCOUNT NUMBER AFTER OFFER

16 OF FREE ITEM

17 [Sections 302.254-302.300 reserved for expansion]

18 SUBCHAPTER G. ENFORCEMENT

19 Sec. 302.301. INJUNCTION

20 Sec. 302.302. CIVIL PENALTIES

21 Sec. 302.303. DECEPTIVE TRADE PRACTICES

22 Sec. 302.304. ACTION TO RECOVER AGAINST SECURITY

23 CHAPTER 302. REGULATION OF TELEPHONE SOLICITATION

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 302.001. DEFINITIONS. In this chapter:

26 (1) "Item" means property or a service. The term
27 includes a coupon book to be used with a business.

1 (2) "Owner" means a person who has control of or is
2 entitled to, by ownership or other claim, at least 10 percent of a
3 seller's net income.

4 (3) "Purchaser" means a person who:

5 (A) is solicited to become or becomes obligated
6 for the purchase or rental of an item; or

7 (B) is offered an opportunity to claim or receive
8 an item.

9 (4) "Salesperson" means a person who is employed or
10 authorized by a seller to make a telephone solicitation.

11 (5) "Seller" means a person who makes a telephone
12 solicitation on the person's own behalf.

13 (6) "Supervised financial institution" means a bank,
14 trust company, savings and loan association, credit union,
15 industrial loan company, personal property broker, consumer
16 finance lender, commercial finance lender, insurer, or other
17 financial institution that is subject to supervision by an official
18 or agency of this state or the United States.

19 (7) "Telephone solicitation" means a telephone call a
20 seller or salesperson initiates to induce a person to purchase,
21 rent, claim, or receive an item. The term includes a telephone call
22 a purchaser makes in response to a solicitation sent by mail or made
23 by any other means. (Bus. & Com. Code, Sec. 38.001.)

24 Sec. 302.002. MAKING TELEPHONE SOLICITATION. For purposes
25 of this chapter, a person makes a telephone solicitation if the
26 person effects or attempts to effect a telephone solicitation,
27 including a solicitation initiated by an automatic dialing machine

1 or a recorded message device. (Bus. & Com. Code, Sec. 38.002.)

2 Sec. 302.003. LIBERAL CONSTRUCTION AND APPLICATION. This
3 chapter shall be liberally construed and applied to promote its
4 underlying purpose to protect persons against false, misleading, or
5 deceptive practices in the telephone solicitation business. (Bus.
6 & Com. Code, Sec. 38.003.)

7 Sec. 302.004. ATTEMPTED WAIVER VOID. An attempted waiver
8 of a provision of this chapter is void. (Bus. & Com. Code, Sec.
9 38.305.)

10 [Sections 302.005-302.050 reserved for expansion]

11 SUBCHAPTER B. EXEMPTIONS

12 Sec. 302.051. BURDEN OF PROOF. (a) In a civil proceeding
13 in which a violation of this chapter is alleged, a person who claims
14 an exemption from the application of this chapter has the burden of
15 proving the exemption.

16 (b) In a criminal proceeding in which a violation of this
17 chapter is alleged, a person who claims an exemption from the
18 application of this chapter as a defense to prosecution has the
19 burden of producing evidence to support the defense. (Bus. & Com.
20 Code, Sec. 38.051.)

21 Sec. 302.052. EXEMPTIONS APPLY ONLY TO SELLERS; EXCEPTION.
22 Except as provided by Section 302.060, an exemption from the
23 application of this chapter applies only to a seller. (Bus. & Com.
24 Code, Sec. 38.052.)

25 Sec. 302.053. EXEMPTION: PERSONS REGULATED BY OTHER LAW.
26 This chapter does not apply to:

27 (1) a person offering or selling a security that has

1 been qualified for sale under Section 7, The Securities Act
2 (Article 581-7, Vernon's Texas Civil Statutes), or that is subject
3 to an exemption under Section 5 or 6 of that Act;

4 (2) a publicly traded corporation registered with the
5 Securities and Exchange Commission or the State Securities Board,
6 or a subsidiary or agent of the corporation;

7 (3) a person who holds a license issued under the
8 Insurance Code if the solicited transaction is governed by that
9 code;

10 (4) a supervised financial institution or a parent, a
11 subsidiary, or an affiliate of a supervised financial institution;

12 (5) a person whose business is regulated by the Public
13 Utility Commission of Texas or an affiliate of that person, except
14 that this chapter applies to such a person or affiliate only with
15 respect to one or more automated dial announcing devices;

16 (6) a person subject to the control or licensing
17 regulations of the Federal Communications Commission;

18 (7) a person selling a contractual plan regulated by
19 the Federal Trade Commission trade regulation on use of negative
20 option plans by sellers in commerce under 16 C.F.R. Part 425;

21 (8) a person subject to filing requirements under
22 Chapter 1803, Occupations Code; or

23 (9) a person who:

24 (A) is soliciting a transaction regulated by the
25 Commodity Futures Trading Commission; and

26 (B) is registered or holds a temporary license
27 for the activity described by Paragraph (A) with the Commodity

1 Futures Trading Commission under the Commodity Exchange Act (7
2 U.S.C. Section 1 et seq.), if the registration or license has not
3 expired or been suspended or revoked. (Bus. & Com. Code, Sec.
4 38.053.)

5 Sec. 302.054. EXEMPTION: PERSONS SELLING MEDIA
6 SUBSCRIPTIONS, CERTAIN MERCHANDISE, OR ITEMS FROM CERTAIN
7 CATALOGS. This chapter does not apply to:

8 (1) a person soliciting the sale of a subscription to:
9 (A) a daily or weekly newspaper of general
10 circulation;

11 (B) a magazine or other periodical of general
12 circulation; or

13 (C) a cable television service;

14 (2) a person selling merchandise under an arrangement
15 in which the seller periodically ships the merchandise to a
16 consumer who has consented in advance to receive the merchandise
17 periodically; or

18 (3) a person periodically issuing and delivering to
19 purchasers catalogs that each:

20 (A) include a written description or
21 illustration and the sales price of each item offered for sale;

22 (B) include at least 24 full pages of written
23 material or illustrations;

24 (C) are distributed in more than one state; and

25 (D) have an annual circulation of at least
26 250,000 customers. (Bus. & Com. Code, Sec. 38.054.)

27 Sec. 302.055. EXEMPTION: EDUCATIONAL AND NONPROFIT

1 ORGANIZATIONS. This chapter does not apply to an educational
2 institution or organization or a nonprofit organization exempt from
3 taxation under Section 501(c)(3), Internal Revenue Code of 1986.
4 (Bus. & Com. Code, Sec. 38.055.)

5 Sec. 302.056. EXEMPTION: CERTAIN COMMERCIAL SALES. This
6 chapter does not apply to a sale in which the purchaser is a
7 business that intends to:

8 (1) resell the item purchased; or

9 (2) use the item purchased in a recycling, reuse,
10 remanufacturing, or manufacturing process. (Bus. & Com. Code, Sec.
11 38.056.)

12 Sec. 302.057. EXEMPTION: PERSON SOLICITING FOOD SALES.
13 This chapter does not apply to a person soliciting the sale of food.
14 (Bus. & Com. Code, Sec. 38.057.)

15 Sec. 302.058. EXEMPTION: SOLICITATION OF FORMER OR CURRENT
16 CUSTOMERS. This chapter does not apply to:

17 (1) the solicitation of a contract for the maintenance
18 or repair of an item previously purchased from the person making the
19 solicitation or on whose behalf the solicitation is made; or

20 (2) a person who:

21 (A) is soliciting business from a former or
22 current customer; and

23 (B) has operated under the same business name for
24 at least two years. (Bus. & Com. Code, Sec. 38.058.)

25 Sec. 302.059. EXEMPTION: PERSONS WHO MAKE CERTAIN SALES
26 PRESENTATIONS OR MAKE SALES AT ESTABLISHED RETAIL LOCATIONS. This
27 chapter does not apply to:

1 (1) a person conducting a telephone solicitation who:

2 (A) does not intend to complete or obtain
3 provisional acceptance of a sale during the telephone solicitation;

4 (B) does not make a major sales presentation
5 during the telephone solicitation but arranges for a major sales
6 presentation to be made face-to-face at a later meeting between the
7 salesperson and the purchaser; and

8 (C) does not cause an individual to go to the
9 purchaser to collect payment for the purchase or to deliver an item
10 purchased directly following the telephone solicitation; or

11 (2) a person who for at least two years, under the same
12 name as that used in connection with the person's telemarketing
13 operations, has operated a retail establishment where consumer
14 goods are displayed and offered for sale continuously, if a
15 majority of the person's business involves buyers obtaining
16 services or products at the retail establishment. (Bus. & Com.
17 Code, Sec. 38.059.)

18 Sec. 302.060. EXEMPTION: CERTAIN PERSONS PROVIDING
19 TELEPHONE SOLICITATION SERVICES PREDOMINANTLY FOR EXEMPT PERSONS.

20 This chapter does not apply to a person:

21 (1) who provides telephone solicitation services
22 under contract to a seller;

23 (2) who has been operating continuously for at least
24 three years under the same business name; and

25 (3) for whom at least 75 percent of the person's
26 contracts are performed on behalf of other persons exempt from the
27 application of this chapter under this section. (Bus. & Com. Code,

1 Sec. 38.060(a).)

2 Sec. 302.061. EXEMPTION: PERSONS CONDUCTING CERTAIN
3 ISOLATED TELEPHONE SOLICITATIONS. This chapter does not apply to a
4 person engaging in a telephone solicitation that:

- 5 (1) is an isolated transaction; and
6 (2) is not done in the course of a pattern of repeated
7 transactions of a similar nature. (Bus. & Com. Code, Sec. 38.061.)

8 [Sections 302.062-302.100 reserved for expansion]

9 SUBCHAPTER C. REGISTRATION

10 Sec. 302.101. REGISTRATION CERTIFICATE REQUIRED. (a) A
11 seller may not make a telephone solicitation from a location in this
12 state or to a purchaser located in this state unless the seller
13 holds a registration certificate for the business location from
14 which the telephone solicitation is made.

15 (b) A separate registration certificate is required for
16 each business location from which a telephone solicitation is made.
17 (Bus. & Com. Code, Sec. 38.101.)

18 Sec. 302.102. FILING OF REGISTRATION STATEMENT; PUBLIC
19 INFORMATION. (a) To obtain a registration certificate, a seller
20 must file with the secretary of state a registration statement
21 that:

- 22 (1) is in the form prescribed by the secretary of
23 state;
24 (2) contains the information required by Subchapter D;
25 (3) is verified by each principal of the seller; and
26 (4) specifies the date and location of verification.

27 (b) Information included in or attached to a registration

1 statement is public information.

2 (c) In this section, "principal" means an owner, an
3 executive officer of a corporation, a general partner of a
4 partnership, a sole proprietor, a trustee of a trust, or another
5 individual with similar supervisory functions with respect to any
6 person. (Bus. & Com. Code, Sec. 38.302.)

7 Sec. 302.103. ISSUANCE OF REGISTRATION CERTIFICATE. (a)

8 The secretary of state shall issue a registration certificate and
9 mail the certificate to the seller when the secretary of state
10 receives:

11 (1) a completed registration statement required by
12 Section 302.102;

13 (2) the filing fee prescribed by Section 302.106;

14 (3) the security required by Section 302.107; and

15 (4) the consent regarding service of process required
16 by Section 302.108.

17 (b) If the seller uses a single registration statement to
18 register more than one business location, the secretary of state
19 shall:

20 (1) issue a registration certificate for each business
21 location; and

22 (2) mail all the certificates to the principal
23 business location shown on the registration statement. (Bus. &
24 Com. Code, Sec. 38.104.)

25 Sec. 302.104. EFFECTIVE DATE OF REGISTRATION STATEMENT;
26 RENEWAL. (a) A registration statement takes effect on the date the
27 secretary of state issues the registration certificate and is

1 effective for one year.

2 (b) A registration statement may be renewed annually by:

3 (1) filing a renewal registration statement
4 containing the information required by Subchapter D; and

5 (2) paying the filing fee prescribed by Section
6 302.106. (Bus. & Com. Code, Sec. 38.105.)

7 Sec. 302.105. ADDENDA REQUIREMENTS. (a) For each quarter
8 after the effective date of a registration statement, the seller
9 shall file with the secretary of state an addendum providing the
10 required registration information for each salesperson who is
11 soliciting or has solicited on behalf of the seller during the
12 preceding quarter.

13 (b) A seller may comply with Subsection (a) by filing with
14 the secretary of state a copy of the "Employer's Quarterly Report"
15 for employee wages that the seller files with the Texas Workforce
16 Commission.

17 (c) In addition to filing the quarterly addendum, if a
18 material change in information submitted in a registration
19 statement, other than the information described by Subsection (a),
20 occurs before the date for renewal, a seller shall submit that
21 information to the secretary of state by filing an addendum. (Bus.
22 & Com. Code, Sec. 38.106.)

23 Sec. 302.106. FILING FEE. The filing fee for a registration
24 statement is \$200. (Bus. & Com. Code, Sec. 38.103.)

25 Sec. 302.107. SECURITY REQUIREMENTS. A registration
26 statement must be accompanied by security that:

27 (1) is in the amount of \$10,000;

- 1 (2) is in the form of:
- 2 (A) a bond executed by a corporate security that:
- 3 (i) is approved by the secretary of state;
- 4 and
- 5 (ii) holds a license to transact business
- 6 in this state;
- 7 (B) an irrevocable letter of credit issued for
- 8 the benefit of the registrant by a supervised financial institution
- 9 whose deposits are insured by an agency of the federal government;
- 10 or
- 11 (C) a certificate of deposit in a supervised
- 12 financial institution whose deposits are insured by an agency of
- 13 the federal government, the principal of which may be withdrawn
- 14 only on the order of the secretary of state; and
- 15 (3) is conditioned on the seller's compliance with
- 16 this chapter. (Bus. & Com. Code, Sec. 38.107.)

17 Sec. 302.108. APPOINTMENT OF SECRETARY OF STATE AS AGENT

18 FOR SERVICE. (a) A seller shall file with the secretary of state,

19 in the form prescribed by the secretary of state, an irrevocable

20 consent appointing the secretary of state to act as the seller's

21 agent to receive service of process in a noncriminal action or

22 proceeding that may arise under this chapter against the seller or

23 the seller's successor, executor, or administrator if:

24 (1) an agent has not been named under Section

25 302.151(15);

26 (2) the agent named under Section 302.151(15) has

27 resigned or died and the name of a successor agent has not been

1 submitted under Section 302.105; or

2 (3) the agent named under Section 302.151(15) cannot
3 with reasonable diligence be found at the disclosed address.

4 (b) Service on the secretary of state under this section has
5 the same effect as service on the seller. Service on the secretary
6 of state may be made by:

7 (1) leaving a copy of the process in the office of the
8 secretary of state;

9 (2) promptly sending by first class mail a notice of
10 the service and a copy of the process to the seller's principal
11 business location at the last address on file with the secretary of
12 state; and

13 (3) filing the plaintiff's affidavit of compliance
14 with this section in the action or proceeding on or before the
15 return date of any process or within an additional period that the
16 court allows. (Bus. & Com. Code, Sec. 38.108.)

17 [Sections 302.109-302.150 reserved for expansion]

18 SUBCHAPTER D. DISCLOSURES REQUIRED IN REGISTRATION STATEMENT

19 Sec. 302.151. DISCLOSURE OF CERTAIN NAMES, ADDRESSES,
20 TELEPHONE NUMBERS, AND ORGANIZATIONAL INFORMATION. A registration
21 statement must contain:

22 (1) the seller's name and, if different from the
23 seller's name, the name under which the seller is transacting or
24 intends to transact business;

25 (2) the name of each parent and affiliated
26 organization of the seller that:

27 (A) will transact business with a purchaser

1 relating to sales solicited by the seller; or

2 (B) accepts responsibility for statements made
3 by, or acts of, the seller relating to sales solicited by the
4 seller;

5 (3) the seller's:

6 (A) form of business; and

7 (B) place of organization;

8 (4) for a seller who is a corporation, a copy of the
9 seller's certificate of formation and bylaws;

10 (5) for a seller who is a partnership, a copy of the
11 partnership agreement;

12 (6) for a seller who is operating under an assumed
13 business name, the location where the assumed name has been
14 registered;

15 (7) for any parent or affiliated organization
16 disclosed under Subdivision (2), the applicable information that is
17 required of a seller under Subdivisions (3) through (6);

18 (8) the complete street address of each location of
19 the seller, designating the principal location from which the
20 seller will be transacting business;

21 (9) if the principal business location of the seller
22 is not in this state, a designation of the seller's main location in
23 this state;

24 (10) a listing of each telephone number to be used by
25 the seller and the address where each telephone using the number is
26 located;

27 (11) the name and title of each of the seller's

1 officers, directors, trustees, general and limited partners, and
2 owners, as applicable, and the name of each of those persons who has
3 management responsibilities in connection with the seller's
4 business activities;

5 (12) for each person whose name is disclosed under
6 Subdivision (11) and for each seller who is a sole proprietor:

7 (A) the complete address of the person's
8 principal residence;

9 (B) the person's date of birth; and

10 (C) the number of and state that issued the
11 person's driver's license;

12 (13) the name and principal residence address of each
13 person the seller leaves in charge at each location from which the
14 seller transacts business in this state and the business location
15 at which each of those persons is or will be in charge;

16 (14) the name and principal residence address of each
17 salesperson who solicits on the seller's behalf or a copy of the
18 "Employer's Quarterly Report" for employee wages the seller files
19 with the Texas Workforce Commission and the name the salesperson
20 uses while soliciting;

21 (15) the name and address of the seller's agent in this
22 state, other than the secretary of state, who is authorized to
23 receive service of process; and

24 (16) the name and address of each financial
25 institution with which the seller makes banking or similar monetary
26 transactions and the identification number of each of the seller's
27 accounts in each institution. (Bus. & Com. Code, Sec. 38.151.)

1 Sec. 302.152. DISCLOSURE OF CERTAIN CONVICTIONS, PLEAS,
2 JUDGMENTS, ORDERS, BANKRUPTCIES, AND REORGANIZATIONS. (a) With
3 respect to the seller and each person identified under Section
4 302.151(11) or (13), a registration statement must identify each
5 person:

6 (1) who has been convicted of or pleaded nolo
7 contendere to:

8 (A) an offense involving an alleged violation of
9 this chapter; or

10 (B) fraud, theft, embezzlement, fraudulent
11 conversion, or misappropriation of property;

12 (2) against whom a final judgment or order has been
13 entered in a civil or administrative action, including a stipulated
14 judgment or order, in which the complaint or petition alleged:

15 (A) acts constituting:

16 (i) a violation of this chapter; or

17 (ii) fraud, theft, embezzlement,
18 fraudulent conversion, or misappropriation of property;

19 (B) the use of false or misleading
20 representations in an attempt to sell or otherwise dispose of
21 property; or

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

24 (3) who is subject to an injunction or restrictive
25 court order relating to business activity as the result of an action
26 brought by a federal, state, or local public agency, including an
27 action affecting a vocational license; or

1 (4) who, during the previous seven tax years:

2 (A) has filed in bankruptcy;

3 (B) has been adjudged a bankrupt;

4 (C) has been reorganized because of insolvency;

5 or

6 (D) has been a principal, director, officer,
7 trustee, or general or limited partner of, or had management
8 responsibilities for, a corporation, partnership, joint venture,
9 or other business entity that has filed in bankruptcy, been
10 adjudged a bankrupt, or been reorganized because of insolvency
11 while the person held that position or on or before the first
12 anniversary of the date on which the person last held that position.

13 (b) For each person identified under Subsection (a)(1),
14 (2), or (3), the statement must disclose:

15 (1) the court that received the plea of nolo
16 contendere or the court or administrative agency that rendered the
17 conviction, judgment, or order;

18 (2) the docket number of the matter;

19 (3) the date the plea of nolo contendere was received
20 or the date of the conviction, judgment, or order; and

21 (4) the name of any government agency that brought the
22 action resulting in the plea or the conviction, judgment, or order.

23 (c) For each person identified under Subsection (a)(4), the
24 statement must disclose:

25 (1) the name and location of the person filing in
26 bankruptcy, adjudged a bankrupt, or reorganized because of
27 insolvency;

- 1 (2) the date of the filing, judgment, or
2 reorganization order;
- 3 (3) the court having jurisdiction; and
- 4 (4) the docket number of the matter. (Bus. & Com.
5 Code, Sec. 38.152.)

6 Sec. 302.153. DISCLOSURE OF CERTAIN SALES INFORMATION. (a)
7 A registration statement must be accompanied by:

- 8 (1) a description of the items the seller is offering
9 for sale;
- 10 (2) a copy of all sales information and literature,
11 including scripts, outlines, instructions, and information
12 regarding the conduct of telephone solicitations, sample
13 introductions, sample closings, product information, and contest
14 or premium-award information, that the seller provides to
15 salespersons or about which the seller informs salespersons;
- 16 (3) a copy of all written material the seller sends to
17 any purchaser; and
- 18 (4) as applicable, the information and documents
19 specified by Subsections (b) through (h).

20 (b) If the seller represents or implies, or directs a
21 salesperson to represent or imply, to a purchaser that the
22 purchaser will receive a specific item, including a certificate
23 that the purchaser must redeem to obtain the item described in the
24 certificate, or one or more items from among designated items,
25 regardless of whether the items are designated as gifts, premiums,
26 bonuses, or prizes or otherwise, the registration statement must be
27 accompanied by:

- 1 (1) a list of the items described;
- 2 (2) the value of each item and the basis for the
3 valuation;
- 4 (3) the price the seller paid for each item to the
5 seller's supplier and the name, address, and telephone number of
6 each item's supplier;
- 7 (4) all rules and terms a purchaser must meet to
8 receive the item; and
- 9 (5) if the purchaser will not receive all of the items
10 described by the seller:
- 11 (A) the manner in which the seller decides which
12 item a particular purchaser is to receive;
- 13 (B) for each item, the odds of a single purchaser
14 receiving the item; and
- 15 (C) the name and address of each purchaser who
16 has received, during the preceding 12 months, the item with the
17 greatest value and the item with the lowest odds of being received.
- 18 (c) If the seller is offering an item that the seller does
19 not manufacture or supply, the registration statement must be
20 accompanied by:
- 21 (1) the name, address, and telephone number of each of
22 the seller's suppliers;
- 23 (2) a description of each item provided by each
24 supplier named in Subdivision (1); and
- 25 (3) as applicable, the information and documents
26 specified by Subsections (d) through (g).
- 27 (d) If the seller is offering an item that the seller does

1 not manufacture or supply and the possession of the item is to be
2 retained by the seller or will not be transferred to the purchaser
3 until the purchaser has paid in full, the registration statement
4 must be accompanied by:

5 (1) the address of each location where the item will be
6 kept;

7 (2) if the item is not kept on premises owned by the
8 seller or at an address registered under Section 302.151(8) or (9),
9 the name of the owner of the business at which the item will be kept;
10 and

11 (3) a copy of any contract or other document that
12 evidences the seller's right to store the item at the address
13 designated under Subdivision (2).

14 (e) If the seller is offering an item that the seller does
15 not manufacture or supply and the seller is not selling the item
16 from the seller's own inventory but purchases the item to fill an
17 order previously taken from a purchaser, the registration statement
18 must be accompanied by a copy of each contract or other document
19 that evidences the seller's ability to call on suppliers to fill the
20 seller's orders.

21 (f) If the seller is offering an item that the seller does
22 not manufacture or supply and the seller represents to purchasers
23 that the seller has insurance or a surety bond relating to a
24 purchaser's purchase of an item, the registration statement must be
25 accompanied by a copy of each insurance policy or bond.

26 (g) If the seller is offering an item that the seller does
27 not manufacture or supply and the seller makes a representation

1 regarding the post-purchase earning or profit potential of an item,
2 the registration statement must be accompanied by:

- 3 (1) data to substantiate the claims made; and
4 (2) if the representation relates to previous sales
5 made by the seller or a related entity, substantiating data based on
6 the experiences of at least 50 percent of purchasers of that
7 particular type of item from the seller or related entity during the
8 preceding six months, including:

9 (A) the period the seller or related entity has
10 been selling the particular type of item being offered;

11 (B) the number of purchasers of the item known to
12 the seller or related entity to have made at least the same earnings
13 or profit as those represented; and

14 (C) the percentage that the number disclosed
15 under Paragraph (B) represents of the total number of purchasers
16 from the seller or related entity of the particular type of item
17 offered.

18 (h) If the seller is offering to sell an interest in an oil,
19 gas, or mineral field, well, or exploration site, the registration
20 statement must be accompanied by:

21 (1) any ownership interest of the seller in each
22 field, well, or site being offered for sale;

23 (2) the total number of interests to be sold in each
24 field, well, or site being offered for sale; and

25 (3) if, in selling an interest in any particular
26 field, well, or site, reference is made to an investigation of the
27 field, well, or site by the seller or anyone else:

1 (A) the name, business address, telephone
2 number, and professional credentials of the person who conducted
3 the investigation; and

4 (B) a copy of the report and other documents
5 relating to the investigation prepared by the person who conducted
6 the investigation. (Bus. & Com. Code, Sec. 38.153.)

7 [Sections 302.154-302.200 reserved for expansion]

8 SUBCHAPTER E. ADDITIONAL INFORMATION FROM SELLER

9 Sec. 302.201. INFORMATION REQUIRED TO BE POSTED OR
10 AVAILABLE AT SELLER'S BUSINESS LOCATION. (a) A seller shall post
11 the registration certificate in a conspicuous place at the location
12 for which the certificate is issued.

13 (b) A seller shall post in close proximity to the
14 registration certificate the name of each individual in charge of
15 the location.

16 (c) A seller shall make available at each of the seller's
17 business locations a copy of the entire registration statement and
18 any addenda for inspection by a purchaser or by a representative of
19 a government agency. (Bus. & Com. Code, Sec. 38.201.)

20 Sec. 302.202. DISCLOSURES REQUIRED BEFORE PURCHASE. When a
21 telephone solicitation is made and before consummation of any sales
22 transaction, a seller shall provide to each purchaser:

23 (1) the complete street address of the location from
24 which the salesperson is calling the purchaser and, if different,
25 the complete street address of the seller's principal location;

26 (2) if the seller represents or implies that a
27 purchaser will receive without charge a specified item or one item

1 from among designated items, regardless of whether the items are
2 designated as gifts, premiums, bonuses, prizes, or otherwise:

3 (A) the information required to be filed by
4 Sections 302.153(b)(4) and (5)(A) and (B), as appropriate; and

5 (B) the total number of individuals who have
6 actually received from the seller during the preceding 12 months
7 the item having the greatest value and the item with the smallest
8 odds of being received;

9 (3) if the seller is offering to sell an interest in an
10 oil, gas, or mineral field, well, or exploration site, the
11 information required by Section 302.153(h); and

12 (4) if the seller represents that an item is being
13 offered at a price below that usually charged for the item, the name
14 of the item's manufacturer. (Bus. & Com. Code, Sec. 38.202.)

15 Sec. 302.203. REFERENCE TO COMPLIANCE WITH STATUTE
16 PROHIBITED. A seller may not make or authorize the making of a
17 reference to the seller's compliance with this chapter to a
18 purchaser. (Bus. & Com. Code, Sec. 38.203.)

19 [Sections 302.204-302.250 reserved for expansion]

20 SUBCHAPTER F. OFFENSES

21 Sec. 302.251. VIOLATION OF CERTAIN PROVISIONS. (a) A
22 person commits an offense if the person knowingly violates Section
23 302.101, 302.105, 302.201, 302.202, or 302.203. Each violation
24 constitutes a separate offense.

25 (b) An offense under this section is a Class A misdemeanor.
26 (Bus. & Com. Code, Sec. 38.251.)

27 Sec. 302.252. ACTING AS SALESPERSON FOR UNREGISTERED

1 SELLER. (a) A person commits an offense if the person knowingly
2 acts as a salesperson on behalf of a seller who violates the
3 registration requirements of this chapter. Each violation
4 constitutes a separate offense.

5 (b) An offense under this section is a Class A misdemeanor.
6 (Bus. & Com. Code, Sec. 38.252.)

7 Sec. 302.253. REQUEST FOR CREDIT CARD ACCOUNT NUMBER OR
8 CHECKING ACCOUNT NUMBER AFTER OFFER OF FREE ITEM. (a) A seller
9 commits an offense if the seller knowingly:

10 (1) represents or implies that a purchaser will
11 receive an item without charge, regardless of whether the item is
12 designated as a gift, premium, bonus, or prize or otherwise; and

13 (2) requests a credit card account number or checking
14 account number from the purchaser to charge to the credit card
15 account or debit from the checking account an amount as a condition
16 precedent to the purchaser's receipt of the item.

17 (b) An offense under this section is a Class A misdemeanor.
18 (Bus. & Com. Code, Sec. 38.253.)

19 [Sections 302.254-302.300 reserved for expansion]

20 SUBCHAPTER G. ENFORCEMENT

21 Sec. 302.301. INJUNCTION. (a) The attorney general may
22 bring an action to enjoin a person from violating this chapter.

23 (b) The attorney general shall notify the defendant of the
24 alleged prohibited conduct not later than the seventh day before
25 the date the action is filed, except that notice is not required if
26 the attorney general intends to request that the court issue a
27 temporary restraining order.

1 (c) The attorney general is entitled to recover all
2 reasonable costs of prosecuting the action, including court costs
3 and investigation costs, deposition expenses, witness fees, and
4 attorney's fees. (Bus. & Com. Code, Sec. 38.301.)

5 Sec. 302.302. CIVIL PENALTIES. (a) A person who violates
6 this chapter is subject to a civil penalty of not more than \$5,000
7 for each violation.

8 (b) A person who violates an injunction issued under Section
9 302.301 is liable to this state for a civil penalty of not more
10 than:

11 (1) \$25,000 for each violation of the injunction; and

12 (2) \$50,000 for all violations of the injunction.

13 (c) The attorney general may bring an action to recover a
14 civil penalty under Subsection (b) in the court that issued the
15 original injunction.

16 (d) The party bringing the action also is entitled to
17 recover all reasonable costs of prosecuting the action, including
18 court costs and investigation costs, deposition expenses, witness
19 fees, and attorney's fees. (Bus. & Com. Code, Sec. 38.302.)

20 Sec. 302.303. DECEPTIVE TRADE PRACTICES. (a) A violation
21 of this chapter is a false, misleading, or deceptive act or practice
22 under Subchapter E, Chapter 17.

23 (b) A public or private right or remedy prescribed by
24 Subchapter E, Chapter 17, may be used to enforce this chapter.
25 (Bus. & Com. Code, Sec. 38.303.)

26 Sec. 302.304. ACTION TO RECOVER AGAINST SECURITY. (a) A
27 person injured by a seller's bankruptcy or by a seller's breach of

1 an agreement entered into during a telephone solicitation may bring
2 an action to recover against the security required under Section
3 302.107.

4 (b) The liability of the surety on a bond provided under
5 Section 302.107 may not exceed the amount of the bond, regardless of
6 the number of claims filed or the aggregate amount claimed. If the
7 amount claimed exceeds the amount of the bond, the surety shall
8 deposit the amount of the bond with the secretary of state for
9 distribution to claimants entitled to recovery, and the surety is
10 then relieved of all liability under the bond. (Bus. & Com. Code,
11 Sec. 38.304.)

12 CHAPTER 303. TELEPHONE SOLICITATION FOR CERTAIN LAW

13 ENFORCEMENT-RELATED CHARITABLE ORGANIZATIONS

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 303.001. DEFINITIONS

16 Sec. 303.002. SOLICITATION GOVERNED BY CHAPTER

17 Sec. 303.003. PUBLIC ACCESS TO CERTAIN DOCUMENTS AND
18 INFORMATION

19 Sec. 303.004. RULES; PROCEDURES; FORMS

20 [Sections 303.005-303.050 reserved for expansion]

21 SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS

22 Sec. 303.051. RECORD OF ORGANIZATIONS

23 Sec. 303.052. FORM AND CONTENT OF REGISTRATION
24 STATEMENT

25 Sec. 303.053. INITIAL REGISTRATION STATEMENT

26 Sec. 303.054. EXPIRATION OF REGISTRATION; RENEWAL

27 Sec. 303.055. FILING FEE

1 Sec. 303.056. EXEMPTION: VOLUNTEER

2 Sec. 303.057. REGISTRATION DOES NOT IMPLY ENDORSEMENT

3 Sec. 303.058. BOOKS AND RECORDS

4 Sec. 303.059. BOND

5 [Sections 303.060-303.100 reserved for expansion]

6 SUBCHAPTER C. SOLICITATION PRACTICES

7 Sec. 303.101. DECEPTIVE ACT OR PRACTICE

8 Sec. 303.102. REPRESENTATION OF BENEFIT TO SURVIVORS

9 Sec. 303.103. NOTICE OF DISPOSITION OF MONEY

10 Sec. 303.104. HOURS OF SOLICITATION

11 [Sections 303.105-303.150 reserved for expansion]

12 SUBCHAPTER D. VIOLATION; REMEDIES

13 Sec. 303.151. NOTIFICATION OF NONCOMPLIANCE

14 Sec. 303.152. VIOLATIONS RELATING TO FILING OF

15 DOCUMENTS

16 Sec. 303.153. REMEDIES

17 Sec. 303.154. VENUE

18 CHAPTER 303. TELEPHONE SOLICITATION FOR CERTAIN LAW

19 ENFORCEMENT-RELATED CHARITABLE ORGANIZATIONS

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 303.001. DEFINITIONS. In this chapter:

22 (1) "Commercial telephone solicitor" means a person
23 whom a law enforcement-related charitable organization retains to
24 make a telephone solicitation, directly or through another person
25 under the direction of the person retained. The term does not
26 include a bona fide officer, director, or employee of, or volunteer
27 for, a law enforcement-related charitable organization.

1 (2) "Contribution" means a promise to give or a gift of
2 money or other property, credit, financial assistance, or another
3 thing of any kind or value. The term does not include:

4 (A) volunteer services; or

5 (B) bona fide fees, dues, or assessments a member
6 pays if membership is not conferred solely as consideration for
7 making a contribution in response to a telephone solicitation.

8 (3) "Law enforcement-related charitable organization"
9 means a person who solicits a contribution and is or purports to be
10 established or operating for a charitable purpose relating to law
11 enforcement. The term includes a nongovernmental law enforcement
12 organization or publication and survivors of law enforcement
13 officers killed in the line of duty. The term does not include a
14 governmental law enforcement agency or organization.

15 (4) "Telephone solicitation" means the use of a
16 telephone to solicit another person to make a charitable
17 contribution to a law enforcement-related charitable organization.
18 (V.A.C.S. Art. 9023e, Secs. 2(1), (2), (3), (6).)

19 Sec. 303.002. SOLICITATION GOVERNED BY CHAPTER. The
20 telephone solicitation of a contribution from a person in this
21 state is considered to be engaging in telephone solicitation in
22 this state regardless of where the solicitation originates.
23 (V.A.C.S. Art. 9023e, Sec. 1.)

24 Sec. 303.003. PUBLIC ACCESS TO CERTAIN DOCUMENTS AND
25 INFORMATION. (a) Except as provided by Subsection (b), a document
26 required to be filed with the attorney general under this chapter is
27 public information available to members of the public under Chapter

1 552, Government Code.

2 (b) A document that identifies the donors to a law
3 enforcement-related charitable organization is confidential and
4 not subject to disclosure. (V.A.C.S. Art. 9023e, Sec. 3(b).)

5 Sec. 303.004. RULES; PROCEDURES; FORMS. The attorney
6 general may adopt rules, procedures, and forms necessary to
7 administer and enforce this chapter. (V.A.C.S. Art. 9023e, Sec.
8 14.)

9 [Sections 303.005-303.050 reserved for expansion]

10 SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS

11 Sec. 303.051. RECORD OF ORGANIZATIONS. The attorney
12 general shall maintain:

13 (1) a register of law enforcement-related charitable
14 organizations subject to this chapter; and

15 (2) a registry of law enforcement-related charitable
16 organizations that submit to the attorney general a completed
17 registration statement containing the information required by
18 Section 303.052. (V.A.C.S. Art. 9023e, Secs. 3(a), 4(a) (part).)

19 Sec. 303.052. FORM AND CONTENT OF REGISTRATION STATEMENT.
20 A registration statement under Section 303.051(2) must be submitted
21 on a form the attorney general prescribes or approves and must
22 contain:

23 (1) for each of the organization's offices, chapters,
24 local units, branches, and affiliates:

25 (A) the legal name and each assumed name;

26 (B) the mailing address and street address; and

27 (C) each telephone number and facsimile number;

- 1 (2) the organization's employer identification
2 number;
- 3 (3) the name, title, address, and telephone number of:
4 (A) the organization's executive director or
5 other chief operating officer; and
6 (B) each of the organization's officers and
7 directors;
- 8 (4) the name of each officer, director, or employee:
9 (A) whom the organization compensates or who has
10 custody and control of the organization's money; and
11 (B) who has been convicted of or pleaded nolo
12 contendere to:
13 (i) a felony; or
14 (ii) a misdemeanor involving fraud or the
15 theft, misappropriation, misapplication, or misuse of another's
16 property;
- 17 (5) for each person listed under Subdivision (4), a
18 statement of:
19 (A) the offense; and
20 (B) the state, court, and date of each conviction
21 or plea of nolo contendere;
- 22 (6) if the organization is a corporation, the date and
23 state of incorporation;
- 24 (7) if the organization is not a corporation, the type
25 of organization and date established;
- 26 (8) the date the organization began transacting
27 business in this state;

1 (9) the name and address of the organization's
2 registered agent in this state;

3 (10) a statement of the organization's charitable
4 purposes;

5 (11) a list of the programs for which funds are
6 solicited;

7 (12) the day and month on which the organization's
8 fiscal year ends;

9 (13) a statement of whether the organization:

10 (A) is eligible to receive tax-deductible
11 contributions under Section 170, Internal Revenue Code of 1986; and

12 (B) has applied for or been granted tax-exempt
13 status by the Internal Revenue Service and, if so:

14 (i) the Internal Revenue Code of 1986
15 section on which the application was based;

16 (ii) the application date;

17 (iii) the date the exemption was granted or
18 denied; and

19 (iv) a statement of whether or when the tax
20 exemption has ever been denied, revoked, or modified;

21 (14) a statement that includes:

22 (A) the method of accounting used and the name,
23 address, and telephone number of each of the organization's
24 accountants and auditors;

25 (B) for the preceding 12 months:

26 (i) the total contributions received;

27 (ii) the total fund-raising costs, computed

1 according to generally accepted accounting principles;

2 (iii) if the organization retained a
3 commercial telephone solicitor:

4 (a) the name and address of each
5 commercial telephone solicitor; and

6 (b) a written confirmation from each
7 commercial telephone solicitor that it has complied with all state
8 and local registration laws; and

9 (iv) the amount paid to commercial
10 telephone solicitors; and

11 (C) a statement that:

12 (i) the organization has attempted in good
13 faith to comply with each ordinance of a municipality or each order
14 of a county in this state regarding telephone solicitation that has
15 been filed with the attorney general; or

16 (ii) no ordinance or order described by
17 Subparagraph (i) applies;

18 (15) if the organization files a federal tax return, a
19 copy of:

20 (A) the organization's most recently filed
21 Internal Revenue Service Form 990 and other federal tax returns;

22 (B) each supplement, amendment, and attachment
23 to those returns; and

24 (C) each request for an extension to file any of
25 those returns;

26 (16) if the organization does not file a federal tax
27 return:

1 (A) a statement of the reason a return is not
2 filed; and

3 (B) the organization's most recent financial
4 statements, including audited financial statements, if any have
5 been prepared; and

6 (17) a sworn statement verifying that the information
7 contained in the registration statement and each attachment to the
8 registration statement is true, correct, and complete to the best
9 of the affiant's knowledge. (V.A.C.S. Art. 9023e, Secs. 4(a)
10 (part), (e).)

11 Sec. 303.053. INITIAL REGISTRATION STATEMENT. A law
12 enforcement-related charitable organization shall file the
13 organization's initial registration statement before the 10th
14 working day before the date the organization begins telephone
15 solicitation in this state. (V.A.C.S. Art. 9023e, Sec. 4(b).)

16 Sec. 303.054. EXPIRATION OF REGISTRATION; RENEWAL. (a) A
17 law enforcement-related charitable organization's registration
18 expires on the 15th day of the fifth month after the last day of the
19 organization's fiscal year.

20 (b) The organization shall file a renewal registration
21 statement on the form required under Section 303.052. The renewal
22 registration statement must include the organization's name and
23 employer identification number and any changes to information
24 previously submitted to the attorney general. For an item on which
25 there is no change from the previous year's registration statement,
26 "no change" may be indicated. (V.A.C.S. Art. 9023e, Sec. 4(c).)

27 Sec. 303.055. FILING FEE. (a) An initial registration

1 statement must be accompanied by a filing fee not to exceed \$50.

2 (b) A renewal registration statement must be accompanied by
3 a filing fee of \$50. (V.A.C.S. Art. 9023e, Sec. 4(d).)

4 Sec. 303.056. EXEMPTION: VOLUNTEER. A volunteer
5 authorized to solicit on behalf of a law enforcement-related
6 charitable organization is not required to register under this
7 chapter. (V.A.C.S. Art. 9023e, Sec. 4(f).)

8 Sec. 303.057. REGISTRATION DOES NOT IMPLY ENDORSEMENT. (a)
9 Registration under this chapter does not imply endorsement by this
10 state or the attorney general.

11 (b) A law enforcement-related charitable organization may
12 not state or imply that registration under this chapter is
13 endorsement by this state or the attorney general. (V.A.C.S. Art.
14 9023e, Sec. 8.)

15 Sec. 303.058. BOOKS AND RECORDS. (a) A law
16 enforcement-related charitable organization required to file a
17 registration statement shall maintain books and records of the
18 organization's activities in this state. The books and records must
19 be maintained:

20 (1) in a form that enables the organization to
21 accurately provide the information required by this chapter; and

22 (2) until at least the third anniversary of the end of
23 the period to which the registration statement relates.

24 (b) On written request of authorized personnel of the
25 attorney general, the organization shall make the books and records
26 available for inspection and copying by authorized personnel:

27 (1) at the organization's principal place of business

1 not later than the 10th working day after the date of the request;
2 or

3 (2) at another agreed place and time.

4 (c) The authority provided by this section is in addition to
5 the attorney general's other statutory or common law audit or
6 investigative authority. (V.A.C.S. Art. 9023e, Sec. 7.)

7 Sec. 303.059. BOND. A commercial telephone solicitor shall
8 post with the secretary of state a surety bond that:

9 (1) is in the amount of \$50,000; and

10 (2) is issued by a surety company authorized to
11 transact business in this state. (V.A.C.S. Art. 9023e, Sec. 5.)

12 [Sections 303.060-303.100 reserved for expansion]

13 SUBCHAPTER C. SOLICITATION PRACTICES

14 Sec. 303.101. DECEPTIVE ACT OR PRACTICE. A person may not
15 commit an unfair or deceptive act or practice in making a telephone
16 solicitation for a law enforcement-related charitable
17 organization. (V.A.C.S. Art. 9023e, Sec. 13(a).)

18 Sec. 303.102. REPRESENTATION OF BENEFIT TO SURVIVORS. A
19 person may not represent to a person solicited that a contribution
20 is to be used to benefit the survivors of a law enforcement officer
21 killed in the line of duty unless:

22 (1) all of the contributions collected are used to
23 benefit those survivors; or

24 (2) the person solicited is informed in writing of the
25 percentage of the contribution that will directly benefit those
26 survivors. (V.A.C.S. Art. 9023e, Sec. 13(b).)

27 Sec. 303.103. NOTICE OF DISPOSITION OF MONEY. (a) If less

1 than 90 percent of the contributions collected by a law
2 enforcement-related charitable organization or commercial
3 telephone solicitor are paid to a law enforcement-related
4 charitable organization, the commercial telephone solicitor shall
5 notify each person solicited by telephone, before accepting a
6 contribution from the person, of:

7 (1) the percentage of the contributions that will be
8 paid to the organization for which the contributions are being
9 solicited; and

10 (2) the percentage of the contributions that the
11 solicitor will retain.

12 (b) Information required to be disclosed under Subsection
13 (a) shall also be included on any written statement mailed to the
14 contributor. (V.A.C.S. Art. 9023e, Sec. 12(a).)

15 Sec. 303.104. HOURS OF SOLICITATION. A law
16 enforcement-related charitable organization or commercial
17 telephone solicitor may not make a telephone solicitation call
18 unless the call is made after 9 a.m. and before 7 p.m., Monday
19 through Friday. (V.A.C.S. Art. 9023e, Sec. 12(b).)

20 [Sections 303.105-303.150 reserved for expansion]

21 SUBCHAPTER D. VIOLATION; REMEDIES

22 Sec. 303.151. NOTIFICATION OF NONCOMPLIANCE. If a law
23 enforcement-related charitable organization does not file a
24 document required by this chapter, files an incomplete or
25 inaccurate document, or otherwise does not comply with this
26 chapter, the attorney general shall notify the organization of the
27 organization's noncompliance by first class mail sent to the

1 organization's last reported address. (V.A.C.S. Art. 9023e, Sec.
2 6(a).)

3 Sec. 303.152. VIOLATIONS RELATING TO FILING OF DOCUMENTS.

4 (a) A law enforcement-related charitable organization violates
5 this chapter if the organization:

6 (1) does not file complete documents before the 31st
7 day after the date a notice under Section 303.151 is mailed; or

8 (2) with actual awareness files materially inaccurate
9 documents.

10 (b) For purposes of Subsection (a)(2), actual awareness may
11 be inferred from an objective manifestation that indicates that a
12 person acted with actual awareness. (V.A.C.S. Art. 9023e, Secs.
13 2(4), 6(b).)

14 Sec. 303.153. REMEDIES. (a) The attorney general may bring
15 an action against a person who violates this chapter to:

16 (1) cancel or suspend the person's registration;

17 (2) obtain an injunction to restrain the person from
18 continuing the violation;

19 (3) restrain the person from transacting business in
20 this state while violating this chapter;

21 (4) impose a civil penalty of not more than \$25,000 for
22 each violation; or

23 (5) both obtain an injunction and impose a civil
24 penalty.

25 (b) A person who violates an injunction issued under this
26 section is liable to this state for a civil penalty of not less than
27 \$100,000.

1 (c) In an action that the attorney general successfully
2 prosecutes under this chapter, the court may allow the attorney
3 general to recover civil penalties and the reasonable costs,
4 attorney's fees, and expenses, including investigative costs,
5 witness fees, and deposition expenses, incurred in bringing the
6 action.

7 (d) A remedy authorized by this chapter is in addition to
8 any other procedure or remedy provided by another statutory law or
9 common law. (V.A.C.S. Art. 9023e, Secs. 9, 10 (part).)

10 Sec. 303.154. VENUE. An action under this chapter must be
11 brought in:

12 (1) Travis County;

13 (2) the county in which the law enforcement-related
14 charitable organization has its principal place of business or a
15 fixed and established place of business at the time the action is
16 brought; or

17 (3) the county in which solicitation occurred.
18 (V.A.C.S. Art. 9023e, Sec. 11.)

19 CHAPTER 304. TELEMARKETING

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 304.001. SHORT TITLE

22 Sec. 304.002. DEFINITIONS

23 Sec. 304.003. MAKING TELEMARKETING CALL

24 Sec. 304.004. INAPPLICABILITY OF CHAPTER TO CERTAIN
25 CALLS

26 Sec. 304.005. LIBERAL CONSTRUCTION AND APPLICATION

27 Sec. 304.006. ATTEMPTED WAIVER VOID

1 [Sections 304.007-304.050 reserved for expansion]

2 SUBCHAPTER B. TEXAS NO-CALL LIST

3 Sec. 304.051. MAINTENANCE OF TEXAS NO-CALL LIST

4 Sec. 304.052. TELEMARKETING CALL TO TELEPHONE NUMBER

5 ON LIST PROHIBITED

6 Sec. 304.053. EXPIRATION, RENEWAL, AND DELETION OF

7 ENTRY

8 Sec. 304.054. FEE

9 Sec. 304.055. PUBLICATION IN TELEPHONE DIRECTORY

10 Sec. 304.056. PLACEMENT OF ENTRIES ON NATIONAL

11 DO-NOT-CALL REGISTRY

12 Sec. 304.057. GENERAL RULEMAKING AUTHORITY

13 Sec. 304.058. RULES REGARDING ISOLATED CALLS

14 Sec. 304.059. RULES REGARDING PUBLIC NOTICE

15 Sec. 304.060. RULES REGARDING DISSEMINATION OF LIST

16 Sec. 304.061. EDUCATIONAL PROGRAMS

17 Sec. 304.062. ASSISTANCE OF DEPARTMENT OF INFORMATION

18 RESOURCES

19 [Sections 304.063-304.100 reserved for expansion]

20 SUBCHAPTER C. FACSIMILE TRANSMISSIONS

21 Sec. 304.101. NOTICE IN FACSIMILE SOLICITATION

22 Sec. 304.102. ACKNOWLEDGMENT REQUIRED; TRANSMISSION

23 PROHIBITED

24 [Sections 304.103-304.150 reserved for expansion]

25 SUBCHAPTER D. CALLER IDENTIFICATION

26 Sec. 304.151. INTERFERENCE WITH CALLER IDENTIFICATION

27 SERVICE OR DEVICE PROHIBITED

1 Sec. 304.152. EXCEPTION: USE OF CERTAIN SERVICE OR
2 EQUIPMENT

3 [Sections 304.153-304.200 reserved for expansion]

4 SUBCHAPTER E. REGULATORY REPORTS

5 Sec. 304.201. REPORT BY COMMISSION

6 Sec. 304.202. REPORT BY ATTORNEY GENERAL

7 [Sections 304.203-304.250 reserved for expansion]

8 SUBCHAPTER F. ENFORCEMENT

9 Sec. 304.251. ENFORCEMENT BY COMMISSION

10 Sec. 304.252. ENFORCEMENT BY ATTORNEY GENERAL

11 Sec. 304.253. ENFORCEMENT BY LICENSING AGENCY

12 Sec. 304.254. DETERMINATION OF AMOUNT OF

13 ADMINISTRATIVE PENALTY

14 Sec. 304.255. STAY OF ADMINISTRATIVE PENALTY

15 Sec. 304.256. CONTESTED CASE

16 Sec. 304.257. PRIVATE ACTION: TELEMARKETING CALLS

17 Sec. 304.258. PRIVATE ACTION: FACSIMILE TRANSMISSION

18 Sec. 304.259. VENUE

19 CHAPTER 304. TELEMARKETING

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 304.001. SHORT TITLE. This chapter may be cited as the
22 Texas Telemarketing Disclosure and Privacy Act. (Bus. & Com. Code,
23 Sec. 44.001.)

24 Sec. 304.002. DEFINITIONS. In this chapter:

25 (1) "Caller identification service or device" means a
26 service or device designed to provide the user of the service or
27 device with the telephone number of an incoming telephone call.

1 (2) "Commission" means the Public Utility Commission
2 of Texas.

3 (3) "Consumer good or service" means property of any
4 kind that is normally used for personal, family, or household
5 purposes. The term does not include a security, as defined by
6 Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil
7 Statutes).

8 (4) "Established business relationship" means a
9 relationship that:

10 (A) is formed by a voluntary two-way
11 communication between a person and a consumer, regardless of
12 whether consideration is exchanged;

13 (B) pertains to a consumer good or service
14 offered by the person; and

15 (C) has not been terminated by either party.

16 (5) "Facsimile recording device" means a device
17 capable of receiving a facsimile transmission.

18 (6) "Facsimile solicitation" means a telemarketing
19 call made by a transmission to a facsimile recording device.

20 (7) "State licensee" means a person licensed by a
21 state agency under a law of this state that requires the person to
22 obtain a license as a condition of engaging in a profession or
23 business.

24 (8) "Telemarketer" means a person who makes or causes
25 to be made a telemarketing call.

26 (9) "Telemarketing call" means an unsolicited
27 telephone call made to:

- 1 (A) solicit a sale of a consumer good or service;
2 (B) solicit an extension of credit for a consumer
3 good or service; or
4 (C) obtain information that may be used to
5 solicit a sale of a consumer good or service or to extend credit for
6 the sale.

7 (10) "Telephone call" means a call or other
8 transmission made to or received at a telephone number, including:

- 9 (A) a call made by an automated telephone dialing
10 system;
11 (B) a transmission to a facsimile recording
12 device; and
13 (C) a call to a mobile telephone number serviced
14 by a provider of commercial mobile service, as defined by Section
15 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.),
16 as amended, Federal Communications Commission rules, or the Omnibus
17 Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), as amended.
18 (Bus. & Com. Code, Secs. 44.002, 44.003(a).)

19 Sec. 304.003. MAKING TELEMARKETING CALL. For purposes of
20 this chapter, a person makes a telemarketing call if the person
21 effects a telemarketing call on the person's own behalf or on behalf
22 of another entity. A person makes a telemarketing call on behalf of
23 another entity if, as a result of the telemarketing call, the other
24 entity can:

- 25 (1) become entitled to receive money or other property
26 of any kind from a sale solicited during the call; or
27 (2) receive information obtained during the call to:

1 (A) extend or offer to extend to the person
2 solicited credit for a consumer good or service; or

3 (B) directly solicit a sale of a consumer good or
4 service or extend credit for the sale. (Bus. & Com. Code, Sec.
5 44.004.)

6 Sec. 304.004. INAPPLICABILITY OF CHAPTER TO CERTAIN
7 CALLS. This chapter does not apply to a call made:

8 (1) by a consumer:

9 (A) as the result of a solicitation by a seller or
10 telemarketer; or

11 (B) in response to general media advertising by a
12 direct mail solicitation that clearly, conspicuously, and
13 truthfully makes all disclosures required by federal or state law;

14 (2) in connection with:

15 (A) an established business relationship; or

16 (B) a business relationship that has been
17 terminated, if the call is made before the later of:

18 (i) the publication date of the first Texas
19 no-call list in which the consumer's telephone number appears; or

20 (ii) the first anniversary of the date of
21 termination;

22 (3) between a telemarketer and a business, other than
23 by a facsimile solicitation, unless the business has informed the
24 telemarketer that the business does not wish to receive a
25 telemarketing call from the telemarketer;

26 (4) to collect a debt; or

27 (5) by a state licensee if:

1 (A) the call is not made by an automated
2 telephone dialing system;

3 (B) the solicited transaction is not completed
4 until a face-to-face sales presentation by the seller occurs and
5 the consumer is not required to pay or authorize payment until after
6 the presentation; and

7 (C) the consumer has not informed the
8 telemarketer that the consumer does not wish to receive a
9 telemarketing call from the telemarketer. (Bus. & Com. Code, Sec.
10 44.003(b).)

11 Sec. 304.005. LIBERAL CONSTRUCTION AND APPLICATION. This
12 chapter shall be liberally construed and applied to promote its
13 underlying purpose to protect the public against false, misleading,
14 abusive, or deceptive practices in the telemarketing business.
15 (Bus. & Com. Code, Sec. 44.005.)

16 Sec. 304.006. ATTEMPTED WAIVER VOID. An attempted waiver
17 of a provision of this chapter is void. (Bus. & Com. Code, Sec.
18 44.006.)

19 [Sections 304.007-304.050 reserved for expansion]

20 SUBCHAPTER B. TEXAS NO-CALL LIST

21 Sec. 304.051. MAINTENANCE OF TEXAS NO-CALL LIST. (a) The
22 commission shall provide for the operation of a database to compile
23 a list of names, zip codes, and telephone numbers of consumers in
24 this state who object to receiving telemarketing calls or other
25 unsolicited telephone calls.

26 (b) The Texas no-call list is a combined list consisting of
27 the name and telephone numbers of:

1 (1) each consumer in this state who has requested to be
2 on that list; and

3 (2) each person in the portion of the national
4 do-not-call registry maintained by the United States government
5 that relates to this state.

6 (c) The commission shall:

7 (1) make available an Internet website at which a
8 person may request that a telephone number be placed on the Texas
9 no-call list; and

10 (2) provide a toll-free telephone number and mailing
11 address that a person may call or write to obtain a copy of a form to
12 request placement of a telephone number on the Texas no-call list.

13 (d) The Texas no-call list shall be updated and published on
14 January 1, April 1, July 1, and October 1 of each year.

15 (e) The commission may contract with a private vendor to
16 maintain the Texas no-call list if the vendor has maintained a
17 no-call list database containing the names and telephone numbers of
18 consumers who have previously requested to be added to a no-call
19 list. A contract under this subsection must require the vendor to
20 publish the Texas portion of the national no-call list in an
21 electronic format for any telemarketer who agrees to use the Texas
22 no-call list only to update the telemarketer's no-call list to
23 include those persons with whom the telemarketer does not have an
24 established business relationship. (Bus. & Com. Code, Secs.
25 44.101(a), (b), (c) (part).)

26 Sec. 304.052. TELEMARKETING CALL TO TELEPHONE NUMBER ON
27 LIST PROHIBITED. A telemarketer may not make a telemarketing call

1 to a telephone number published on the Texas no-call list more than
2 60 days after the date the telephone number appears on the current
3 list. (Bus. & Com. Code, Sec. 44.102(a).)

4 Sec. 304.053. EXPIRATION, RENEWAL, AND DELETION OF ENTRY.

5 (a) An entry on the Texas no-call list expires on the third
6 anniversary of the date the entry is first published on the list.
7 An entry may be renewed for successive three-year periods.

8 (b) The telephone number of a consumer on the Texas no-call
9 list may be deleted from the list if:

- 10 (1) the consumer makes a written request; or
11 (2) the telephone number of the consumer is changed.
12 (Bus. & Com. Code, Sec. 44.101(c) (part).)

13 Sec. 304.054. FEE. (a) Except as provided by Subsection
14 (b), the commission may charge a person a reasonable amount not to
15 exceed \$3 for a request to place a telephone number on the Texas
16 no-call list or to renew an entry on the list.

17 (b) The commission shall provide a method for placement or
18 renewal of an entry by use of the Internet at no charge. (Bus. &
19 Com. Code, Sec. 44.101(c) (part).)

20 Sec. 304.055. PUBLICATION IN TELEPHONE DIRECTORY. A
21 private for-profit publisher of a residential telephone directory
22 that is distributed to the public at minimal or no cost shall
23 include in the directory a prominently displayed Internet website
24 address, toll-free number, and mailing address established by the
25 commission through which a person may request placement of a
26 telephone number on the Texas no-call list or order a copy of the
27 form to make that request. (Bus. & Com. Code, Sec. 44.101(c))

1 (part).)

2 Sec. 304.056. PLACEMENT OF ENTRIES ON NATIONAL DO-NOT-CALL
3 REGISTRY. The commission or a person the commission designates
4 may:

5 (1) provide information on the Texas no-call list to
6 the administrator of the national do-not-call registry; and

7 (2) allow the names and telephone numbers on the Texas
8 no-call list to be placed on the national do-not-call registry.
9 (Bus. & Com. Code, Sec. 44.101(d).)

10 Sec. 304.057. GENERAL RULEMAKING AUTHORITY. The commission
11 may adopt rules to administer this subchapter and Subchapter F,
12 other than Sections 304.254, 304.255, 304.256, and 304.258, as that
13 subchapter relates to the Texas no-call list. (Bus. & Com. Code,
14 Sec. 44.103(a) (part).)

15 Sec. 304.058. RULES REGARDING ISOLATED CALLS. The
16 commission shall adopt rules providing that a telemarketing call
17 made to a telephone number on the Texas no-call list is not a
18 violation of Section 304.052 if the telemarketing call:

19 (1) is an isolated occurrence; and

20 (2) is made by a person who has in place adequate
21 procedures to comply with this subchapter. (Bus. & Com. Code, Sec.
22 44.103(a) (part).)

23 Sec. 304.059. RULES REGARDING PUBLIC NOTICE. The
24 commission shall adopt rules requiring each local exchange
25 telephone company and each provider of commercial mobile service,
26 as described by Section 304.002(10)(C), that provides commercial
27 mobile service in this state to inform its customers of the

1 requirements of this subchapter and Sections 304.251, 304.252,
2 304.253, 304.257, and 304.259, as those sections relate to the
3 Texas no-call list, through:

4 (1) annual inserts in billing statements mailed to
5 customers;

6 (2) notification:

7 (A) included in a customer's electronic bill;

8 (B) printed on a customer's paper bill;

9 (C) sent free of charge by messaging service to a
10 customer's mobile telephone number; or

11 (D) conspicuously published in the consumer
12 information pages of local telephone directories; or

13 (3) other appropriate means of notice. (Bus. & Com.
14 Code, Sec. 44.103(a) (part).)

15 Sec. 304.060. RULES REGARDING DISSEMINATION OF LIST. The
16 commission shall adopt rules providing for:

17 (1) the distribution of the Texas no-call list in
18 formats, including electronic formats, commonly used by persons
19 making telemarketing calls; and

20 (2) a fee for each distribution, not to exceed \$75.
21 (Bus. & Com. Code, Sec. 44.103(a) (part).)

22 Sec. 304.061. EDUCATIONAL PROGRAMS. In addition to
23 requiring the notice under Section 304.059, the commission may
24 conduct educational programs designed to inform members of the
25 public of their rights and telemarketers of their obligations under
26 this subchapter and Sections 304.251, 304.252, 304.253, 304.257,
27 and 304.259, as those sections relate to the Texas no-call list.

1 (Bus. & Com. Code, Sec. 44.103(b).)

2 Sec. 304.062. ASSISTANCE OF DEPARTMENT OF INFORMATION
3 RESOURCES. On request of the commission, the Department of
4 Information Resources shall assist the commission in administering
5 this subchapter. (Bus. & Com. Code, Sec. 44.104.)

6 [Sections 304.063-304.100 reserved for expansion]

7 SUBCHAPTER C. FACSIMILE TRANSMISSIONS

8 Sec. 304.101. NOTICE IN FACSIMILE SOLICITATION. In
9 addition to complying with the technical and procedural standards
10 established by federal statutes or regulations regarding telephone
11 facsimile machines and transmissions, a person in this state who
12 makes or causes to be made a facsimile solicitation shall include in
13 the transmitted document or on a cover page to the document a
14 statement, in at least 12-point type, containing:

15 (1) the complete name of the person making the
16 facsimile solicitation and street address of the person's place of
17 business; and

18 (2) a toll-free or local exchange accessible telephone
19 number of the person that:

20 (A) is answered in the order in which calls are
21 received by an individual capable of responding to inquiries from
22 recipients of facsimile solicitations at all times after 9 a.m. and
23 before 5 p.m. on each day except Saturday and Sunday; or

24 (B) automatically and immediately deletes the
25 specified telephone number of the recipient. (Bus. & Com. Code,
26 Sec. 44.151.)

27 Sec. 304.102. ACKNOWLEDGMENT REQUIRED; TRANSMISSION

1 PROHIBITED. On receiving oral or written notice from the recipient
2 of a facsimile solicitation not to send any further facsimile
3 transmissions to one or more specified telephone numbers, the
4 person making the solicitation:

5 (1) shall within 24 hours after receiving the notice
6 send the recipient of the solicitation written acknowledgment of
7 the receipt; and

8 (2) other than a single transmission to comply with
9 Subdivision (1), may not make or cause to be made a transmission to
10 a telephone number specified by the recipient. (Bus. & Com. Code,
11 Sec. 44.152.)

12 [Sections 304.103-304.150 reserved for expansion]

13 SUBCHAPTER D. CALLER IDENTIFICATION

14 Sec. 304.151. INTERFERENCE WITH CALLER IDENTIFICATION
15 SERVICE OR DEVICE PROHIBITED. (a) In making a telemarketing
16 call, a telemarketer may not block the identity of the telephone
17 number from which the call is made to evade a device designed to
18 identify a telephone caller.

19 (b) A telemarketer may not:

20 (1) interfere with or circumvent the capability of a
21 caller identification service or device to access or provide to the
22 recipient of the telemarketing call any information regarding the
23 call that the service or device is capable of providing; or

24 (2) fail to provide caller identification information
25 in a manner that is accessible by a caller identification service or
26 device, if the telemarketer is capable of providing the information
27 in that manner. (Bus. & Com. Code, Secs. 44.051(a), (b).)

1 Sec. 304.152. EXCEPTION: USE OF CERTAIN SERVICE OR
2 EQUIPMENT. For purposes of Section 304.151, use of a
3 telecommunications service or telecommunications equipment that is
4 incapable of transmitting caller identification information does
5 not of itself constitute interference with or circumvention of the
6 capability of a caller identification service or device to access
7 or provide the information. (Bus. & Com. Code, Sec. 44.051(c).)

8 [Sections 304.153-304.200 reserved for expansion]

9 SUBCHAPTER E. REGULATORY REPORTS

10 Sec. 304.201. REPORT BY COMMISSION. (a) Before December
11 31 of each even-numbered year, the commission shall submit a report
12 to the lieutenant governor and the speaker of the house of
13 representatives.

14 (b) The report must contain for the two-year period ending
15 August 31 of the year of the report:

16 (1) a statement of:

17 (A) the number of telephone numbers included on
18 the Texas no-call list;

19 (B) the number of no-call lists distributed; and

20 (C) the amount collected for requests to place
21 telephone numbers and renew entries on the list and for
22 distribution of the list;

23 (2) a list of complaints the commission received
24 concerning activities regulated by this chapter, itemized by type;

25 (3) a summary of any enforcement efforts made by the
26 commission; and

27 (4) the commission's recommendations for any changes

1 to this chapter. (Bus. & Com. Code, Sec. 44.201.)

2 Sec. 304.202. REPORT BY ATTORNEY GENERAL. (a) Before
3 December 31 of each even-numbered year, the attorney general shall
4 submit a report to the lieutenant governor and the speaker of the
5 house of representatives.

6 (b) The report must contain for the two-year period ending
7 August 31 of the year of the report:

8 (1) a list of complaints the attorney general received
9 concerning activities regulated by this chapter, itemized by type;

10 (2) a summary of any enforcement efforts made by the
11 attorney general; and

12 (3) the attorney general's recommendations for any
13 changes to this chapter. (Bus. & Com. Code, Sec. 44.202.)

14 [Sections 304.203-304.250 reserved for expansion]

15 SUBCHAPTER F. ENFORCEMENT

16 Sec. 304.251. ENFORCEMENT BY COMMISSION. (a) Except as
17 provided by Section 304.253, the commission shall receive and
18 investigate complaints concerning violations of Subchapters B, C,
19 and D and may impose an administrative penalty not to exceed \$1,000
20 for each violation.

21 (b) Notwithstanding Section 304.252, if a complaint alleges
22 that the person violating Subchapter B, C, or D is a
23 telecommunications provider, as defined by Section 51.002,
24 Utilities Code, the commission has exclusive jurisdiction over the
25 violation alleged in the complaint. (Bus. & Com. Code, Secs.
26 44.052(a), 44.102(b) (part), 44.153(a) (part).)

27 Sec. 304.252. ENFORCEMENT BY ATTORNEY GENERAL. (a) Except

1 as provided by Section 304.253, the attorney general may
2 investigate violations of Subchapters B, C, and D and file civil
3 enforcement actions seeking:

- 4 (1) a civil penalty in an amount not to exceed \$1,000
5 for each violation, except as provided by Subsection (b);
- 6 (2) injunctive relief; and
- 7 (3) attorney's fees.

8 (b) If the court finds the defendant wilfully or knowingly
9 violated Subchapter B, C, or D, the court may increase the amount of
10 the civil penalty to an amount not to exceed \$3,000 for each
11 violation.

12 (c) A violation of Subchapter B, C, or D is subject to
13 enforcement action by the attorney general's consumer protection
14 division under Sections 17.47, 17.58, 17.60, and 17.61. (Bus. &
15 Com. Code, Secs. 44.052(b), 44.102(c), 44.153(b).)

16 Sec. 304.253. ENFORCEMENT BY LICENSING AGENCY. (a) A state
17 agency that issues a license to a state licensee shall:

- 18 (1) receive and investigate complaints concerning
19 violations of Subchapters B and C by the state licensee; and
- 20 (2) may receive and investigate complaints concerning
21 violations of Subchapter D by the state licensee.

22 (b) The state agency may:

- 23 (1) impose an administrative penalty not to exceed
24 \$1,000 for each violation;
- 25 (2) order restitution for any monetary damages of the
26 complainant in the case of a violation of Subchapter B or D; and
- 27 (3) suspend or revoke the state licensee's license, if

1 the agency finds that the licensee wilfully or knowingly violated
2 Subchapter B, C, or D. (Bus. & Com. Code, Secs. 44.052(c),
3 44.102(d), 44.153(c).)

4 Sec. 304.254. DETERMINATION OF AMOUNT OF ADMINISTRATIVE
5 PENALTY. The amount of an administrative penalty imposed under
6 this subchapter must be based on:

7 (1) the seriousness of the violation, including the
8 nature, circumstances, extent, and gravity of the violation;

9 (2) any history of previous violations;

10 (3) the amount necessary to deter a future violation;

11 (4) any effort to correct the violation; and

12 (5) any other matter that justice may require. (Bus. &
13 Com. Code, Sec. 44.251.)

14 Sec. 304.255. STAY OF ADMINISTRATIVE PENALTY. (a) The
15 enforcement of an administrative penalty imposed under this
16 subchapter may be stayed during the time the order is under judicial
17 review if the person on whom the penalty is imposed pays the penalty
18 to the clerk of the court or files a supersedeas bond with the court
19 in the amount of the penalty.

20 (b) A person who cannot afford to pay the penalty or file the
21 bond may stay the enforcement by filing an affidavit in the manner
22 required by the Texas Rules of Civil Procedure for a party who
23 cannot afford to file security for costs, subject to the right to
24 contest the affidavit as provided by those rules. (Bus. & Com.
25 Code, Sec. 44.252.)

26 Sec. 304.256. CONTESTED CASE. A proceeding to impose an
27 administrative penalty under this subchapter is a contested case

1 under Chapter 2001, Government Code. (Bus. & Com. Code, Sec.
2 44.253.)

3 Sec. 304.257. PRIVATE ACTION: TELEMARKETING CALLS. (a) A
4 consumer on the Texas no-call list is presumed to be adversely
5 affected by a telemarketer who calls the consumer more than once.
6 The consumer may bring a civil action based on the second or a
7 subsequent violation of Subchapter B if:

8 (1) the consumer has notified the telemarketer of the
9 alleged violation;

10 (2) not later than the 30th day after the date of the
11 call, the consumer files with the commission, the attorney general,
12 or a state agency that licenses the person making the call a
13 verified complaint stating the relevant facts surrounding the
14 violation; and

15 (3) the commission, attorney general, or state agency
16 receiving the complaint does not initiate an administrative action
17 or a civil enforcement action, as appropriate, against the
18 telemarketer named in the complaint before the 121st day after the
19 date the complaint is filed.

20 (b) If the consumer brings an action based on a violation of
21 Section 304.052 and the court finds that the defendant wilfully or
22 knowingly violated that section, the court may award damages in an
23 amount not to exceed \$500 for each violation.

24 (c) Section 304.251(b) does not affect the right of a
25 consumer to bring an action under Subsection (a). (Bus. & Com.
26 Code, Secs. 44.102(b) (part), (f), (g).)

27 Sec. 304.258. PRIVATE ACTION: FACSIMILE TRANSMISSION. (a)

1 A person may bring a civil action based on a violation of Subchapter
2 C:

- 3 (1) for damages in an amount equal to the greater of:
4 (A) the person's actual monetary loss from the
5 violation; or
6 (B) \$500 for each violation;
7 (2) to enjoin the violation; or
8 (3) for both damages and an injunction.

9 (b) If the court finds that the defendant wilfully or
10 knowingly violated Subchapter C, the court may increase the amount
11 of the damages awarded to an amount equal to not more than three
12 times the amount available under Subsection (a)(1).

13 (c) Section 304.251(b) does not affect the right of a
14 consumer to bring an action under Subsection (a). (Bus. & Com.
15 Code, Secs. 44.153(a) (part), (e), (f).)

16 Sec. 304.259. VENUE. (a) Venue for an action based on a
17 violation of Subchapter B or C is in:

- 18 (1) the county in which the telemarketing call was
19 made or received; or
20 (2) Travis County, if the action is brought by the
21 commission, the attorney general, or a state agency.

22 (b) Venue for an action under Subchapter D is in Travis
23 County. (Bus. & Com. Code, Secs. 44.052(d), 44.102(e), 44.153(d).)

24 CHAPTER 305. TELEPHONIC COMMUNICATIONS MADE FOR
25 PURPOSE OF SOLICITATION
26 SUBCHAPTER A. PROHIBITED COMMUNICATIONS MADE FOR
27 PURPOSE OF SOLICITATION

1 Sec. 305.001. PROHIBITED TELEPHONE CALLS

2 Sec. 305.002. PROHIBITED FACSIMILE TRANSMISSIONS:

3 CHARGE TO RECIPIENT

4 Sec. 305.003. PROHIBITED FACSIMILE TRANSMISSIONS:

5 HOURS OF TRANSMISSION

6 [Sections 305.004-305.050 reserved for expansion]

7 SUBCHAPTER B. ENFORCEMENT

8 Sec. 305.051. INVESTIGATION

9 Sec. 305.052. CRIMINAL PENALTY

10 Sec. 305.053. CIVIL ACTION

11 CHAPTER 305. TELEPHONIC COMMUNICATIONS MADE FOR

12 PURPOSE OF SOLICITATION

13 SUBCHAPTER A. PROHIBITED COMMUNICATIONS MADE FOR

14 PURPOSE OF SOLICITATION

15 Sec. 305.001. PROHIBITED TELEPHONE CALLS. A person may not
16 make a telephone call or use an automatic dial announcing device to
17 make a telephone call for the purpose of making a sale if:

18 (1) the person making the call or using the device
19 knows or should have known that the called number is a mobile
20 telephone for which the called person will be charged for that
21 specific call; and

22 (2) the called person has not consented to the making
23 of such a call to the person calling or using the device or to the
24 business enterprise for which the person is calling or using the
25 device. (Bus. & Com. Code, Sec. 35.47(a).)

26 Sec. 305.002. PROHIBITED FACSIMILE TRANSMISSIONS: CHARGE
27 TO RECIPIENT. A person may not make or cause to be made a

1 transmission for the purpose of a solicitation or sale to a
2 facsimile recording device or other telecopier for which the person
3 receiving the transmission will be charged for the transmission,
4 unless the person receiving the transmission has, before the
5 transmission, consented to the making of the transmission. (Bus. &
6 Com. Code, Sec. 35.47(b).)

7 Sec. 305.003. PROHIBITED FACSIMILE TRANSMISSIONS: HOURS OF
8 TRANSMISSION. A person may not make or cause to be made a
9 transmission for the purpose of a solicitation or sale to a
10 facsimile recording device after 11 p.m. and before 7 a.m. (Bus. &
11 Com. Code, Sec. 35.47(c).)

12 [Sections 305.004-305.050 reserved for expansion]

13 SUBCHAPTER B. ENFORCEMENT

14 Sec. 305.051. INVESTIGATION. (a) On complaint of a called
15 person that a person has violated Section 305.001, 305.002, or
16 305.003, the county or district attorney of the county in which the
17 called person resides shall investigate the complaint and file
18 charges if appropriate.

19 (b) A telephone company serving the caller or called person
20 is not responsible for investigating a complaint or keeping records
21 relating to this chapter. (Bus. & Com. Code, Sec. 35.47(d).)

22 Sec. 305.052. CRIMINAL PENALTY. (a) A person who violates
23 Section 305.001, 305.002, or 305.003 commits an offense.

24 (b) An offense under this section is a Class C misdemeanor.
25 (Bus. & Com. Code, Sec. 35.47(e).)

26 Sec. 305.053. CIVIL ACTION. (a) A person who receives a
27 communication that violates 47 U.S.C. Section 227, a regulation

1 adopted under that provision, or Subchapter A may bring an action in
2 this state against the person who originates the communication for:

- 3 (1) an injunction;
- 4 (2) damages in the amount provided by this section; or
- 5 (3) both an injunction and damages.

6 (b) A plaintiff who prevails in an action for damages under
7 this section is entitled to the greater of:

- 8 (1) \$500 for each violation; or
- 9 (2) the plaintiff's actual damages.

10 (c) If the court finds that the defendant committed the
11 violation knowingly or intentionally, the court may increase the
12 amount of the award of damages under Subsection (b) to not more than
13 the greater of:

- 14 (1) \$1,500 for each violation; or
- 15 (2) three times the plaintiff's actual damages. (Bus.
16 & Com. Code, Sec. 35.47(f).)

17 [Chapters 306-320 reserved for expansion]

18 SUBTITLE B. ELECTRONIC COMMUNICATIONS

19 CHAPTER 321. REGULATION OF CERTAIN ELECTRONIC MAIL

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 321.001. DEFINITIONS

22 [Sections 321.002-321.050 reserved for expansion]

23 SUBCHAPTER B. PROHIBITED AND REQUIRED CONDUCT

24 Sec. 321.051. TRANSMISSION OF CERTAIN COMMERCIAL

25 ELECTRONIC MAIL MESSAGES PROHIBITED

- 1 Sec. 321.052. REQUIREMENT FOR TRANSMISSION OF
2 UNSOLICITED COMMERCIAL ELECTRONIC MAIL
3 MESSAGES
- 4 Sec. 321.053. SELLING OR PROVIDING CERTAIN ELECTRONIC
5 MAIL ADDRESSES PROHIBITED
- 6 [Sections 321.054-321.100 reserved for expansion]
- 7 SUBCHAPTER C. ENFORCEMENT
- 8 Sec. 321.101. TRANSMISSION OF MESSAGE CONTAINING
9 OBSCENE MATERIAL OR MATERIAL DEPICTING
10 SEXUAL CONDUCT; CRIMINAL PENALTY
- 11 Sec. 321.102. VIOLATION OF CHAPTER: GENERAL CIVIL
12 PENALTY AND INJUNCTIVE RELIEF
- 13 Sec. 321.103. VIOLATION OF CHAPTER: DECEPTIVE TRADE
14 PRACTICE
- 15 Sec. 321.104. VIOLATION OF CHAPTER: CIVIL ACTION FOR
16 DAMAGES
- 17 Sec. 321.105. ALTERNATIVE RECOVERY FOR PERSONS OTHER
18 THAN ELECTRONIC MAIL SERVICE PROVIDERS
- 19 Sec. 321.106. ALTERNATIVE RECOVERY FOR ELECTRONIC MAIL
20 SERVICE PROVIDERS
- 21 Sec. 321.107. REQUIRED NOTICE OF CIVIL ACTION TO
22 ATTORNEY GENERAL; CIVIL PENALTY
- 23 Sec. 321.108. INTERVENTION IN CIVIL ACTION BY ATTORNEY
24 GENERAL
- 25 Sec. 321.109. CERTIFICATION AS CLASS ACTION PROHIBITED
- 26 Sec. 321.110. PROTECTION OF SECRECY OR SECURITY

1 Sec. 321.111. IMMUNITY FROM LIABILITY: COMMERCIAL
2 ELECTRONIC MAIL MESSAGE TRANSMITTED BY
3 ERROR OR ACCIDENT

4 Sec. 321.112. IMMUNITY FROM LIABILITY:
5 TELECOMMUNICATIONS UTILITIES AND
6 ELECTRONIC MAIL SERVICE PROVIDERS

7 Sec. 321.113. QUALIFIED IMMUNITY FROM LIABILITY OF
8 SENDERS

9 Sec. 321.114. AUTHORITY TO BLOCK CERTAIN COMMERCIAL
10 ELECTRONIC MAIL MESSAGES; QUALIFIED
11 IMMUNITY

12 CHAPTER 321. REGULATION OF CERTAIN ELECTRONIC MAIL

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 321.001. DEFINITIONS. In this chapter:

15 (1) "Commercial electronic mail message" means an
16 electronic mail message that advertises, offers for sale or lease,
17 or promotes any goods, services, business opportunity, property, or
18 other article, commodity, or thing of value.

19 (2) "Electronic mail" means a message, file, or other
20 information that is transmitted through a local, regional, or
21 global computer network, regardless of whether the message, file,
22 or information is viewed, stored for retrieval at a later time,
23 printed, or filtered by a computer program that is designed or
24 intended to filter or screen the message, file, or information.

25 (3) "Electronic mail service provider" means a person
26 who:

27 (A) is authorized to transact business in this

1 state;

2 (B) is an intermediary in transmitting or
3 receiving electronic mail; and

4 (C) provides to an end user of an electronic mail
5 service the ability to transmit or receive electronic mail.

6 (4) "Established business relationship" means a
7 relationship that:

8 (A) is formed by a voluntary two-way
9 communication between a person and another person, regardless of
10 whether consideration is exchanged;

11 (B) pertains to a product or service offered by
12 one of the persons; and

13 (C) has not been terminated by either person.

14 (5) "Obscene" has the meaning assigned by Section
15 43.21, Penal Code.

16 (6) "Sender" means a person who initiates an
17 electronic mail message.

18 (7) "Sexual conduct" has the meaning assigned by
19 Section 43.25, Penal Code.

20 (8) "Unsolicited commercial electronic mail message"
21 means a commercial electronic mail message transmitted without the
22 consent of the recipient by a person with whom the recipient does
23 not have an established business relationship. The term does not
24 include electronic mail transmitted by an organization using
25 electronic mail to communicate exclusively with members,
26 employees, or contractors of the organization. (Bus. & Com. Code,
27 Secs. 46.001(1), (2), (3), (4), (6), (7), (8), (9).)

1 [Sections 321.002-321.050 reserved for expansion]

2 SUBCHAPTER B. PROHIBITED AND REQUIRED CONDUCT

3 Sec. 321.051. TRANSMISSION OF CERTAIN COMMERCIAL
4 ELECTRONIC MAIL MESSAGES PROHIBITED. (a) In this section,
5 "Internet domain name" means a globally unique, hierarchical
6 reference to an Internet host or service that is:

7 (1) assigned through a centralized Internet naming
8 authority; and

9 (2) composed of a series of character strings
10 separated by periods, with the right-most string specifying the top
11 of the hierarchy.

12 (b) A person may not intentionally transmit a commercial
13 electronic mail message that:

14 (1) is an unsolicited commercial electronic mail
15 message and falsifies the electronic mail transmission or routing
16 information;

17 (2) contains false, deceptive, or misleading
18 information in the subject line; or

19 (3) uses another person's Internet domain name without
20 the other person's consent. (Bus. & Com. Code, Secs. 46.001(5),
21 46.002.)

22 Sec. 321.052. REQUIREMENT FOR TRANSMISSION OF UNSOLICITED
23 COMMERCIAL ELECTRONIC MAIL MESSAGES. (a) A person may not
24 intentionally take an action to transmit an unsolicited commercial
25 electronic mail message unless:

26 (1) "ADV:" appears first in the subject line of the
27 message or, if the message contains obscene material or material

1 depicting sexual conduct, "ADV: ADULT ADVERTISEMENT" appears first
2 in the subject line; and

3 (2) the sender or a person acting on behalf of the
4 sender provides a functioning return electronic mail address to
5 which a recipient of the message may, at no cost to the recipient,
6 send a reply requesting the removal of the recipient's electronic
7 mail address from the sender's electronic mail list.

8 (b) A sender shall remove a person's electronic mail address
9 from the sender's electronic mail list not later than the third day
10 after the date the sender receives a request for removal of that
11 address under Subsection (a)(2). (Bus. & Com. Code, Sec. 46.003.)

12 Sec. 321.053. SELLING OR PROVIDING CERTAIN ELECTRONIC MAIL
13 ADDRESSES PROHIBITED. A sender or a person acting on behalf of a
14 sender may not sell or otherwise provide to another the electronic
15 mail address of a person who requests the removal of that address
16 from the sender's electronic mail list as provided by Section
17 321.052(a)(2), except as required by other law. (Bus. & Com. Code,
18 Sec. 46.004.)

19 [Sections 321.054-321.100 reserved for expansion]

20 SUBCHAPTER C. ENFORCEMENT

21 Sec. 321.101. TRANSMISSION OF MESSAGE CONTAINING OBSCENE
22 MATERIAL OR MATERIAL DEPICTING SEXUAL CONDUCT; CRIMINAL PENALTY.

23 (a) A person commits an offense if the person intentionally takes
24 an action to transmit a message that contains obscene material or
25 material depicting sexual conduct in violation of Section
26 321.052(a)(1).

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

1 (Bus. & Com. Code, Sec. 46.005.)

2 Sec. 321.102. VIOLATION OF CHAPTER: GENERAL CIVIL PENALTY
3 AND INJUNCTIVE RELIEF. (a) A person who violates this chapter is
4 liable to this state for a civil penalty in an amount not to exceed
5 the lesser of:

6 (1) \$10 for each unlawful message or unlawful action;

7 or

8 (2) \$25,000 for each day an unlawful message is
9 received or each day an unlawful action is taken.

10 (b) The attorney general or a prosecuting attorney in the
11 county in which the violation occurs may:

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

13 (2) obtain an injunction to prevent or restrain a
14 violation of this chapter.

15 (c) The attorney general or prosecuting attorney may
16 recover reasonable expenses incurred in recovering the civil
17 penalty, including court costs, reasonable attorney's fees,
18 investigative costs, witness fees, and deposition expenses.

19 (d) Subsection (a) does not apply to a violation of Section
20 321.107(a). (Bus. & Com. Code, Sec. 46.006.)

21 Sec. 321.103. VIOLATION OF CHAPTER: DECEPTIVE TRADE
22 PRACTICE. A violation of this chapter is a false, misleading, or
23 deceptive act or practice under Subchapter E, Chapter 17, and any
24 public or private right or remedy prescribed by that subchapter may
25 be used to enforce this chapter, except as provided by Section
26 321.109. (Bus. & Com. Code, Sec. 46.007.)

27 Sec. 321.104. VIOLATION OF CHAPTER: CIVIL ACTION FOR

1 DAMAGES. (a) A person injured by a violation of this chapter may
2 bring an action to recover:

- 3 (1) actual damages, including lost profits; or
4 (2) an amount described by Section 321.105 or 321.106,
5 as applicable.

6 (b) A person who prevails in the action is entitled to
7 recover reasonable attorney's fees and court costs. (Bus. & Com.
8 Code, Sec. 46.008(a).)

9 Sec. 321.105. ALTERNATIVE RECOVERY FOR PERSONS OTHER THAN
10 ELECTRONIC MAIL SERVICE PROVIDERS. (a) In lieu of actual damages,
11 a person injured by a violation of this chapter arising from the
12 transmission of an unsolicited or commercial electronic mail
13 message may recover an amount equal to the lesser of:

- 14 (1) \$10 for each unlawful message; or
15 (2) \$25,000 for each day the unlawful message is
16 received.

17 (b) Subsection (a) does not apply to a person who is an
18 electronic mail service provider. (Bus. & Com. Code, Sec.
19 46.008(b).)

20 Sec. 321.106. ALTERNATIVE RECOVERY FOR ELECTRONIC MAIL
21 SERVICE PROVIDERS. In lieu of actual damages, an electronic mail
22 service provider injured by a violation of this chapter arising
23 from the transmission of an unsolicited or commercial electronic
24 mail message may recover an amount equal to the greater of:

- 25 (1) \$10 for each unlawful message; or
26 (2) \$25,000 for each day the unlawful message is
27 received. (Bus. & Com. Code, Sec. 46.008(c).)

1 Sec. 321.107. REQUIRED NOTICE OF CIVIL ACTION TO ATTORNEY
2 GENERAL; CIVIL PENALTY. (a) A person who brings an action under
3 Section 321.104 shall notify the attorney general of the action by
4 mailing a copy of the petition by registered or certified mail not
5 later than the 30th day after the date the petition is filed and at
6 least 10 days before the date set for a hearing on the action.

7 (b) A person who violates Subsection (a) is liable to this
8 state for a civil penalty in an amount not to exceed \$200 for each
9 violation. The attorney general may bring an action to recover the
10 civil penalty in the court in which the action under Section 321.104
11 was brought. (Bus. & Com. Code, Secs. 46.009(a), (c).)

12 Sec. 321.108. INTERVENTION IN CIVIL ACTION BY ATTORNEY
13 GENERAL. The attorney general may intervene in an action brought
14 under Section 321.104 by:

15 (1) filing a notice of intervention with the court in
16 which the action is pending; and

17 (2) serving each party to the action with a copy of the
18 notice of intervention. (Bus. & Com. Code, Sec. 46.009(b).)

19 Sec. 321.109. CERTIFICATION AS CLASS ACTION PROHIBITED. A
20 court may not certify an action brought under this chapter as a
21 class action. (Bus. & Com. Code, Sec. 46.008(d).)

22 Sec. 321.110. PROTECTION OF SECRECY OR SECURITY. At the
23 request of a party to an action brought under this chapter, the
24 court, in the court's discretion, may conduct a legal proceeding in
25 a manner that protects:

26 (1) the secrecy and security of the computer, computer
27 network, computer data, computer program, and computer software

1 involved so as to prevent a possible recurrence of the same or a
2 similar act by another person; or

3 (2) any trade secret of a party to the action. (Bus. &
4 Com. Code, Sec. 46.008(e).)

5 Sec. 321.111. IMMUNITY FROM LIABILITY: COMMERCIAL
6 ELECTRONIC MAIL MESSAGE TRANSMITTED BY ERROR OR ACCIDENT. A person
7 may not be held liable under this chapter for a commercial
8 electronic mail message that is transmitted as a result of an error
9 or accident. (Bus. & Com. Code, Sec. 46.011(e).)

10 Sec. 321.112. IMMUNITY FROM LIABILITY: TELECOMMUNICATIONS
11 UTILITIES AND ELECTRONIC MAIL SERVICE PROVIDERS. (a) In this
12 section, "telecommunications utility" has the meaning assigned by
13 Section 51.002, Utilities Code.

14 (b) A telecommunications utility or an electronic mail
15 service provider may not be held liable under Section 321.051 or
16 321.052 and is not subject to a penalty provided by this chapter.

17 (c) A person injured by a violation of this chapter does not
18 have a cause of action against a telecommunications utility or an
19 electronic mail service provider under this chapter solely because
20 the utility or service provider:

21 (1) is an intermediary between the sender, or a person
22 acting on behalf of the sender, and the recipient in the
23 transmission of electronic mail that violates this chapter;

24 (2) provides transmission, routing, relaying,
25 handling, or storing, through an automatic technical process, of an
26 unsolicited commercial electronic mail message through the
27 utility's or service provider's computer network or facilities; or

1 (3) provides telecommunications services, information
2 services, or other services used in the transmission of an
3 electronic mail message that violates this chapter. (Bus. & Com.
4 Code, Secs. 46.011(a), (b), (c).)

5 Sec. 321.113. QUALIFIED IMMUNITY FROM LIABILITY OF SENDERS.

6 A sender may not be held liable for the transmission of an
7 electronic mail message that violates this chapter if the sender:

8 (1) contracts in good faith with an electronic mail
9 service provider to transmit electronic mail messages for the
10 sender; and

11 (2) has no reason to believe the electronic mail
12 service provider will transmit any of the sender's electronic mail
13 messages in violation of this chapter. (Bus. & Com. Code, Sec.
14 46.011(f).)

15 Sec. 321.114. AUTHORITY TO BLOCK CERTAIN COMMERCIAL
16 ELECTRONIC MAIL MESSAGES; QUALIFIED IMMUNITY. (a) An electronic
17 mail service provider may on its own initiative block the receipt or
18 transmission through its service of any commercial electronic mail
19 message that the service provider reasonably believes is or will be
20 transmitted in violation of this chapter, if the service provider:

21 (1) provides a process for the prompt, good faith
22 resolution of a dispute related to the blocking with the sender of
23 the commercial electronic mail message; and

24 (2) makes contact information for the resolution of
25 the dispute accessible to the public on the service provider's
26 Internet website.

27 (b) An electronic mail service provider who complies with

1 Subsection (a) may not be held liable for blocking the receipt or
2 transmission through its service of any commercial electronic mail
3 message that the service provider reasonably believes is or will be
4 transmitted in violation of this chapter. (Bus. & Com. Code, Secs.
5 46.010, 46.011(d).)

6 CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

- 7 Sec. 322.001. SHORT TITLE
8 Sec. 322.002. DEFINITIONS
9 Sec. 322.003. SCOPE
10 Sec. 322.004. PROSPECTIVE APPLICATION
11 Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC
12 SIGNATURES; VARIATION BY AGREEMENT
13 Sec. 322.006. CONSTRUCTION AND APPLICATION
14 Sec. 322.007. LEGAL RECOGNITION OF ELECTRONIC RECORDS,
15 ELECTRONIC SIGNATURES, AND ELECTRONIC
16 CONTRACTS
17 Sec. 322.008. PROVISION OF INFORMATION IN WRITING;
18 PRESENTATION OF RECORDS
19 Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC
20 RECORD AND ELECTRONIC SIGNATURE
21 Sec. 322.010. EFFECT OF CHANGE OR ERROR
22 Sec. 322.011. NOTARIZATION AND ACKNOWLEDGMENT
23 Sec. 322.012. RETENTION OF ELECTRONIC RECORDS;
24 ORIGINALS
25 Sec. 322.013. ADMISSIBILITY IN EVIDENCE
26 Sec. 322.014. AUTOMATED TRANSACTION
27 Sec. 322.015. TIME AND PLACE OF SENDING AND RECEIPT

- 1 Sec. 322.016. TRANSFERABLE RECORDS
2 Sec. 322.017. ACCEPTANCE AND DISTRIBUTION OF
3 ELECTRONIC RECORDS BY GOVERNMENTAL
4 AGENCIES
5 Sec. 322.018. INTEROPERABILITY
6 Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL
7 ELECTRONIC SIGNATURES ACT
8 Sec. 322.020. APPLICABILITY OF PENAL CODE
9 Sec. 322.021. CERTAIN REQUIREMENTS CONSIDERED TO BE
10 RECOMMENDATIONS

11 CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

12 Sec. 322.001. SHORT TITLE. This chapter may be cited as
13 the Uniform Electronic Transactions Act. (Bus. & Com. Code, Sec.
14 43.001.)

15 Sec. 322.002. DEFINITIONS. In this chapter:

16 (1) "Agreement" means the bargain of the parties in
17 fact, as found in their language or inferred from other
18 circumstances and from rules, regulations, and procedures given the
19 effect of agreements under laws otherwise applicable to a
20 particular transaction.

21 (2) "Automated transaction" means a transaction
22 conducted or performed, in whole or in part, by electronic means or
23 electronic records, in which the acts or records of one or both
24 parties are not reviewed by an individual in the ordinary course in
25 forming a contract, performing under an existing contract, or
26 fulfilling an obligation required by the transaction.

27 (3) "Computer program" means a set of statements or

1 instructions to be used directly or indirectly in an information
2 processing system in order to bring about a certain result.

3 (4) "Contract" means the total legal obligation
4 resulting from the parties' agreement as affected by this chapter
5 and other applicable law.

6 (5) "Electronic" means relating to technology having
7 electrical, digital, magnetic, wireless, optical, electromagnetic,
8 or similar capabilities.

9 (6) "Electronic agent" means a computer program or an
10 electronic or other automated means used independently to initiate
11 an action or respond to electronic records or performances in whole
12 or in part, without review or action by an individual.

13 (7) "Electronic record" means a record created,
14 generated, sent, communicated, received, or stored by electronic
15 means.

16 (8) "Electronic signature" means an electronic sound,
17 symbol, or process attached to or logically associated with a
18 record and executed or adopted by a person with the intent to sign
19 the record.

20 (9) "Governmental agency" means an executive,
21 legislative, or judicial agency, department, board, commission,
22 authority, institution, or instrumentality of the federal
23 government or of a state or of a county, municipality, or other
24 political subdivision of a state.

25 (10) "Information" means data, text, images, sounds,
26 codes, computer programs, software, databases, or the like.

27 (11) "Information processing system" means an

1 electronic system for creating, generating, sending, receiving,
2 storing, displaying, or processing information.

3 (12) "Record" means information that is inscribed on a
4 tangible medium or that is stored in an electronic or other medium
5 and is retrievable in perceivable form.

6 (13) "Security procedure" means a procedure employed
7 for the purpose of verifying that an electronic signature, record,
8 or performance is that of a specific person or for detecting changes
9 or errors in the information in an electronic record. The term
10 includes a procedure that requires the use of algorithms or other
11 codes, identifying words or numbers, encryption, or callback or
12 other acknowledgment procedures.

13 (14) "State" means a state of the United States, the
14 District of Columbia, Puerto Rico, the United States Virgin
15 Islands, or any territory or insular possession subject to the
16 jurisdiction of the United States. The term includes an Indian
17 tribe or band, or Alaskan native village, which is recognized by
18 federal law or formally acknowledged by a state.

19 (15) "Transaction" means an action or set of actions
20 occurring between two or more persons relating to the conduct of
21 business, commercial, or governmental affairs. (Bus. & Com. Code,
22 Sec. 43.002.)

23 Sec. 322.003. SCOPE. (a) Except as otherwise provided in
24 Subsection (b), this chapter applies to electronic records and
25 electronic signatures relating to a transaction.

26 (b) This chapter does not apply to a transaction to the
27 extent it is governed by:

1 (1) a law governing the creation and execution of
2 wills, codicils, or testamentary trusts; or

3 (2) the Uniform Commercial Code, other than Sections
4 1.107 and 1.206 and Chapters 2 and 2A.

5 (c) This chapter applies to an electronic record or
6 electronic signature otherwise excluded from the application of
7 this chapter under Subsection (b) when used for a transaction
8 subject to a law other than those specified in Subsection (b).

9 (d) A transaction subject to this chapter is also subject to
10 other applicable substantive law. (Bus. & Com. Code, Sec. 43.003.)

11 Sec. 322.004. PROSPECTIVE APPLICATION. This chapter
12 applies to any electronic record or electronic signature created,
13 generated, sent, communicated, received, or stored on or after
14 January 1, 2002. (Bus. & Com. Code, Sec. 43.004.)

15 Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC
16 SIGNATURES; VARIATION BY AGREEMENT. (a) This chapter does not
17 require a record or signature to be created, generated, sent,
18 communicated, received, stored, or otherwise processed or used by
19 electronic means or in electronic form.

20 (b) This chapter applies only to transactions between
21 parties each of which has agreed to conduct transactions by
22 electronic means. Whether the parties agree to conduct a
23 transaction by electronic means is determined from the context and
24 surrounding circumstances, including the parties' conduct.

25 (c) A party that agrees to conduct a transaction by
26 electronic means may refuse to conduct other transactions by
27 electronic means. The right granted by this subsection may not be

1 waived by agreement.

2 (d) Except as otherwise provided in this chapter, the effect
3 of any of its provisions may be varied by agreement. The presence
4 in certain provisions of this chapter of the words "unless
5 otherwise agreed," or words of similar import, does not imply that
6 the effect of other provisions may not be varied by agreement.

7 (e) Whether an electronic record or electronic signature
8 has legal consequences is determined by this chapter and other
9 applicable law. (Bus. & Com. Code, Sec. 43.005.)

10 Sec. 322.006. CONSTRUCTION AND APPLICATION. This chapter
11 must be construed and applied:

12 (1) to facilitate electronic transactions consistent
13 with other applicable law;

14 (2) to be consistent with reasonable practices
15 concerning electronic transactions and with the continued
16 expansion of those practices; and

17 (3) to effectuate its general purpose to make uniform
18 the law with respect to the subject of this chapter among states
19 enacting it. (Bus. & Com. Code, Sec. 43.006.)

20 Sec. 322.007. LEGAL RECOGNITION OF ELECTRONIC RECORDS,
21 ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS. (a) A record or
22 signature may not be denied legal effect or enforceability solely
23 because it is in electronic form.

24 (b) A contract may not be denied legal effect or
25 enforceability solely because an electronic record was used in its
26 formation.

27 (c) If a law requires a record to be in writing, an

1 electronic record satisfies the law.

2 (d) If a law requires a signature, an electronic signature
3 satisfies the law. (Bus. & Com. Code, Sec. 43.007.)

4 Sec. 322.008. PROVISION OF INFORMATION IN WRITING;
5 PRESENTATION OF RECORDS. (a) If parties have agreed to conduct a
6 transaction by electronic means and a law requires a person to
7 provide, send, or deliver information in writing to another person,
8 the requirement is satisfied if the information is provided, sent,
9 or delivered, as the case may be, in an electronic record capable of
10 retention by the recipient at the time of receipt. An electronic
11 record is not capable of retention by the recipient if the sender or
12 its information processing system inhibits the ability of the
13 recipient to print or store the electronic record.

14 (b) If a law other than this chapter requires a record (i) to
15 be posted or displayed in a certain manner, (ii) to be sent,
16 communicated, or transmitted by a specified method, or (iii) to
17 contain information that is formatted in a certain manner, the
18 following rules apply:

19 (1) the record must be posted or displayed in the
20 manner specified in the other law;

21 (2) except as otherwise provided in Subsection (d)(2),
22 the record must be sent, communicated, or transmitted by the method
23 specified in the other law; and

24 (3) the record must contain the information formatted
25 in the manner specified in the other law.

26 (c) If a sender inhibits the ability of a recipient to store
27 or print an electronic record, the electronic record is not

1 enforceable against the recipient.

2 (d) The requirements of this section may not be varied by
3 agreement, but:

4 (1) to the extent a law other than this chapter
5 requires information to be provided, sent, or delivered in writing
6 but permits that requirement to be varied by agreement, the
7 requirement under Subsection (a) that the information be in the
8 form of an electronic record capable of retention may also be varied
9 by agreement; and

10 (2) a requirement under a law other than this chapter
11 to send, communicate, or transmit a record by first class mail may
12 be varied by agreement to the extent permitted by the other law.
13 (Bus. & Com. Code, Sec. 43.008.)

14 Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD
15 AND ELECTRONIC SIGNATURE. (a) An electronic record or electronic
16 signature is attributable to a person if it was the act of the
17 person. The act of the person may be shown in any manner, including
18 a showing of the efficacy of any security procedure applied to
19 determine the person to which the electronic record or electronic
20 signature was attributable.

21 (b) The effect of an electronic record or electronic
22 signature attributed to a person under Subsection (a) is determined
23 from the context and surrounding circumstances at the time of its
24 creation, execution, or adoption, including the parties'
25 agreement, if any, and otherwise as provided by law. (Bus. & Com.
26 Code, Sec. 43.009.)

27 Sec. 322.010. EFFECT OF CHANGE OR ERROR. (a) If a change

1 or error in an electronic record occurs in a transmission between
2 parties to a transaction, the rules provided by this section apply.

3 (b) If the parties have agreed to use a security procedure
4 to detect changes or errors and one party has conformed to the
5 procedure, but the other party has not, and the nonconforming party
6 would have detected the change or error had that party also
7 conformed, the conforming party may avoid the effect of the changed
8 or erroneous electronic record.

9 (c) In an automated transaction involving an individual,
10 the individual may avoid the effect of an electronic record that
11 resulted from an error made by the individual in dealing with the
12 electronic agent of another person if the electronic agent did not
13 provide an opportunity for the prevention or correction of the
14 error and, at the time the individual learns of the error, the
15 individual:

16 (1) promptly notifies the other person of the error
17 and that the individual did not intend to be bound by the electronic
18 record received by the other person;

19 (2) takes reasonable steps, including steps that
20 conform to the other person's reasonable instructions, to return to
21 the other person or, if instructed by the other person, to destroy
22 the consideration received, if any, as a result of the erroneous
23 electronic record; and

24 (3) has not used or received any benefit or value from
25 the consideration, if any, received from the other person.

26 (d) If neither Subsection (b) nor Subsection (c) applies,
27 the change or error has the effect provided by other law, including

1 the law of mistake, and the parties' contract, if any.

2 (e) Subsections (c) and (d) may not be varied by agreement.
3 (Bus. & Com. Code, Sec. 43.010.)

4 Sec. 322.011. NOTARIZATION AND ACKNOWLEDGMENT. If a law
5 requires a signature or record to be notarized, acknowledged,
6 verified, or made under oath, the requirement is satisfied if the
7 electronic signature of the person authorized to perform those
8 acts, together with all other information required to be included
9 by other applicable law, is attached to or logically associated
10 with the signature or record. (Bus. & Com. Code, Sec. 43.011.)

11 Sec. 322.012. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.
12 (a) If a law requires that a record be retained, the requirement is
13 satisfied by retaining an electronic record of the information in
14 the record which:

15 (1) accurately reflects the information set forth in
16 the record after it was first generated in its final form as an
17 electronic record or otherwise; and

18 (2) remains accessible for later reference.

19 (b) A requirement to retain a record in accordance with
20 Subsection (a) does not apply to any information the sole purpose of
21 which is to enable the record to be sent, communicated, or received.

22 (c) A person may satisfy Subsection (a) by using the
23 services of another person if the requirements of that subsection
24 are satisfied.

25 (d) If a law requires a record to be presented or retained in
26 its original form, or provides consequences if the record is not
27 presented or retained in its original form, that law is satisfied by

1 an electronic record retained in accordance with Subsection (a).

2 (e) If a law requires retention of a check, that requirement
3 is satisfied by retention of an electronic record of the
4 information on the front and back of the check in accordance with
5 Subsection (a).

6 (f) A record retained as an electronic record in accordance
7 with Subsection (a) satisfies a law requiring a person to retain a
8 record for evidentiary, audit, or like purposes, unless a law
9 enacted after January 1, 2002, specifically prohibits the use of an
10 electronic record for the specified purpose.

11 (g) This section does not preclude a governmental agency of
12 this state from specifying additional requirements for the
13 retention of a record subject to the agency's jurisdiction. (Bus. &
14 Com. Code, Sec. 43.012.)

15 Sec. 322.013. ADMISSIBILITY IN EVIDENCE. In a proceeding,
16 evidence of a record or signature may not be excluded solely because
17 it is in electronic form. (Bus. & Com. Code, Sec. 43.013.)

18 Sec. 322.014. AUTOMATED TRANSACTION. (a) In an automated
19 transaction, the rules provided by this section apply.

20 (b) A contract may be formed by the interaction of
21 electronic agents of the parties, even if no individual was aware of
22 or reviewed the electronic agents' actions or the resulting terms
23 and agreements.

24 (c) A contract may be formed by the interaction of an
25 electronic agent and an individual, acting on the individual's own
26 behalf or for another person, including by an interaction in which
27 the individual performs actions that the individual is free to

1 refuse to perform and which the individual knows or has reason to
2 know will cause the electronic agent to complete the transaction or
3 performance.

4 (d) The terms of the contract are determined by the
5 substantive law applicable to it. (Bus. & Com. Code, Sec. 43.014.)

6 Sec. 322.015. TIME AND PLACE OF SENDING AND RECEIPT. (a)
7 Unless otherwise agreed between the sender and the recipient, an
8 electronic record is sent when it:

9 (1) is addressed properly or otherwise directed
10 properly to an information processing system that the recipient has
11 designated or uses for the purpose of receiving electronic records
12 or information of the type sent and from which the recipient is able
13 to retrieve the electronic record;

14 (2) is in a form capable of being processed by that
15 system; and

16 (3) enters an information processing system outside
17 the control of the sender or of a person that sent the electronic
18 record on behalf of the sender or enters a region of the information
19 processing system designated or used by the recipient which is
20 under the control of the recipient.

21 (b) Unless otherwise agreed between the sender and the
22 recipient, an electronic record is received when:

23 (1) it enters an information processing system that
24 the recipient has designated or uses for the purpose of receiving
25 electronic records or information of the type sent and from which
26 the recipient is able to retrieve the electronic record; and

27 (2) it is in a form capable of being processed by that

1 system.

2 (c) Subsection (b) applies even if the place the information
3 processing system is located is different from the place the
4 electronic record is deemed to be received under Subsection (d).

5 (d) Unless otherwise expressly provided in the electronic
6 record or agreed between the sender and the recipient, an
7 electronic record is deemed to be sent from the sender's place of
8 business and to be received at the recipient's place of business.
9 For purposes of this subsection, the following rules apply:

10 (1) if the sender or the recipient has more than one
11 place of business, the place of business of that person is the place
12 having the closest relationship to the underlying transaction; and

13 (2) if the sender or the recipient does not have a
14 place of business, the place of business is the sender's or the
15 recipient's residence, as the case may be.

16 (e) An electronic record is received under Subsection (b)
17 even if no individual is aware of its receipt.

18 (f) Receipt of an electronic acknowledgment from an
19 information processing system described in Subsection (b)
20 establishes that a record was received but, by itself, does not
21 establish that the content sent corresponds to the content
22 received.

23 (g) If a person is aware that an electronic record
24 purportedly sent under Subsection (a), or purportedly received
25 under Subsection (b), was not actually sent or received, the legal
26 effect of the sending or receipt is determined by other applicable
27 law. Except to the extent permitted by the other law, the

1 requirements of this subsection may not be varied by agreement.
2 (Bus. & Com. Code, Sec. 43.015.)

3 Sec. 322.016. TRANSFERABLE RECORDS. (a) In this section,
4 "transferable record" means an electronic record that:

5 (1) would be a note under Chapter 3, or a document
6 under Chapter 7, if the electronic record were in writing; and

7 (2) the issuer of the electronic record expressly has
8 agreed is a transferable record.

9 (b) A person has control of a transferable record if a
10 system employed for evidencing the transfer of interests in the
11 transferable record reliably establishes that person as the person
12 to which the transferable record was issued or transferred.

13 (c) A system satisfies Subsection (b), and a person is
14 deemed to have control of a transferable record, if the
15 transferable record is created, stored, and assigned in such a
16 manner that:

17 (1) a single authoritative copy of the transferable
18 record exists which is unique, identifiable, and, except as
19 otherwise provided in Subdivisions (4), (5), and (6), unalterable;

20 (2) the authoritative copy identifies the person
21 asserting control as:

22 (A) the person to which the transferable record
23 was issued; or

24 (B) if the authoritative copy indicates that the
25 transferable record has been transferred, the person to which the
26 transferable record was most recently transferred;

27 (3) the authoritative copy is communicated to and

1 maintained by the person asserting control or its designated
2 custodian;

3 (4) copies or revisions that add or change an
4 identified assignee of the authoritative copy can be made only with
5 the consent of the person asserting control;

6 (5) each copy of the authoritative copy and any copy of
7 a copy is readily identifiable as a copy that is not the
8 authoritative copy; and

9 (6) any revision of the authoritative copy is readily
10 identifiable as authorized or unauthorized.

11 (d) Except as otherwise agreed, a person having control of a
12 transferable record is the holder, as defined in Section 1.201, of
13 the transferable record and has the same rights and defenses as a
14 holder of an equivalent record or writing under the Uniform
15 Commercial Code, including, if the applicable statutory
16 requirements under Section 3.302(a), 7.501, or 9.330 are satisfied,
17 the rights and defenses of a holder in due course, a holder to which
18 a negotiable document of title has been duly negotiated, or a
19 purchaser, respectively. Delivery, possession, and indorsement
20 are not required to obtain or exercise any of the rights under this
21 subsection.

22 (e) Except as otherwise agreed, an obligor under a
23 transferable record has the same rights and defenses as an
24 equivalent obligor under equivalent records or writings under the
25 Uniform Commercial Code.

26 (f) If requested by a person against which enforcement is
27 sought, the person seeking to enforce the transferable record shall

1 provide reasonable proof that the person is in control of the
2 transferable record. Proof may include access to the authoritative
3 copy of the transferable record and related business records
4 sufficient to review the terms of the transferable record and to
5 establish the identity of the person having control of the
6 transferable record. (Bus. & Com. Code, Sec. 43.016.)

7 Sec. 322.017. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC
8 RECORDS BY GOVERNMENTAL AGENCIES. (a) Except as otherwise
9 provided by Section 322.012(f), each state agency shall determine
10 whether, and the extent to which, the agency will send and accept
11 electronic records and electronic signatures to and from other
12 persons and otherwise create, generate, communicate, store,
13 process, use, and rely upon electronic records and electronic
14 signatures.

15 (b) To the extent that a state agency uses electronic
16 records and electronic signatures under Subsection (a), the
17 Department of Information Resources and Texas State Library and
18 Archives Commission, pursuant to their rulemaking authority under
19 other law and giving due consideration to security, may specify:

20 (1) the manner and format in which the electronic
21 records must be created, generated, sent, communicated, received,
22 and stored and the systems established for those purposes;

23 (2) if electronic records must be signed by electronic
24 means, the type of electronic signature required, the manner and
25 format in which the electronic signature must be affixed to the
26 electronic record, and the identity of, or criteria that must be met
27 by, any third party used by a person filing a document to facilitate

1 the process;

2 (3) control processes and procedures as appropriate to
3 ensure adequate preservation, disposition, integrity, security,
4 confidentiality, and auditability of electronic records; and

5 (4) any other required attributes for electronic
6 records which are specified for corresponding nonelectronic
7 records or reasonably necessary under the circumstances.

8 (c) Except as otherwise provided in Section 322.012(f),
9 this chapter does not require a governmental agency of this state to
10 use or permit the use of electronic records or electronic
11 signatures. (Bus. & Com. Code, Sec. 43.017.)

12 Sec. 322.018. INTEROPERABILITY. The Department of
13 Information Resources may encourage and promote consistency and
14 interoperability with similar requirements adopted by other
15 governmental agencies of this and other states and the federal
16 government and nongovernmental persons interacting with
17 governmental agencies of this state. If appropriate, those
18 standards may specify differing levels of standards from which
19 governmental agencies of this state may choose in implementing the
20 most appropriate standard for a particular application. (Bus. &
21 Com. Code, Sec. 43.018.)

22 Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL ELECTRONIC
23 SIGNATURES ACT. This chapter modifies, limits, or supersedes the
24 provisions of the Electronic Signatures in Global and National
25 Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by
26 Section 102 of that Act (15 U.S.C. Section 7002). (Bus. & Com.
27 Code, Sec. 43.019.)

1 information service or system that provides or enables computer
2 access to the Internet by multiple users.

3 (4) "Internet" means the largest nonproprietary
4 nonprofit cooperative public computer network, popularly known as
5 the Internet.

6 (5) "Shareware" means copyrighted software for which
7 the copyright owner sets certain conditions for the software's
8 distribution and use, including requiring payment to the copyright
9 owner after a person who has secured a copy of the software decides
10 to use the software, regardless of whether the payment is for
11 additional support or functionality of the software. (Bus. & Com.
12 Code, Secs. 35.101, 35.102(c) (part).)

13 Sec. 323.002. SOFTWARE OR SERVICES THAT RESTRICT ACCESS TO
14 CERTAIN INTERNET MATERIAL. (a) This section does not apply to:

15 (1) the Department of Information Resources, in the
16 department's capacity as the telecommunications provider for this
17 state; or

18 (2) an institution of higher education that provides
19 interactive computer service.

20 (b) A person who charges a fee to provide an interactive
21 computer service shall provide free of charge to each subscriber of
22 the service in this state a link leading to fully functional
23 shareware, freeware, or a demonstration version of software or to a
24 service that, for at least one operating system, enables the
25 subscriber to automatically block or screen material on the
26 Internet.

27 (c) A person who charges a fee to provide an interactive

1 computer service is in compliance with this section if the person
2 places, on the person's first page of world wide web text
3 information accessible to a subscriber, a link leading to the
4 software or service described by Subsection (b). The identity of
5 the link or other on-screen depiction of the link must appear set
6 out from surrounding written or graphical material so as to be
7 conspicuous.

8 (d) A person who provides a link that complies with this
9 section is not liable to a subscriber for any temporary
10 inoperability of the link or for the effectiveness of the software
11 or service to which the person links. (Bus. & Com. Code, Secs.
12 35.102(a), (b), (c) (part), (d).)

13 Sec. 323.003. CIVIL PENALTY. (a) A person is liable to this
14 state for a civil penalty of \$2,000 for each day the person violates
15 Section 323.002. The aggregate civil penalty may not exceed
16 \$60,000.

17 (b) The attorney general may bring an action against a
18 person who violates Section 323.002 to recover the civil penalty.
19 Before bringing the action, the attorney general shall give the
20 person notice of the person's noncompliance and liability for a
21 civil penalty. If the person complies with Section 323.002 not
22 later than the 30th day after the date of the notice, the violation
23 is cured and the person is not liable for the civil penalty. (Bus. &
24 Com. Code, Sec. 35.103.)

25 CHAPTER 324. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 324.001. SHORT TITLE

1 Sec. 324.002. DEFINITIONS

2 Sec. 324.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER

3 Sec. 324.004. CAUSING COMPUTER SOFTWARE TO BE COPIED

4 Sec. 324.005. KNOWING VIOLATION

5 Sec. 324.006. INTENTIONALLY DECEPTIVE MEANS

6 [Sections 324.007-324.050 reserved for expansion]

7 SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

8 Sec. 324.051. UNAUTHORIZED COLLECTION OR CULLING OF

9 PERSONALLY IDENTIFIABLE INFORMATION

10 Sec. 324.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS

11 OF COMPUTER SETTINGS; COMPUTER DAMAGE

12 Sec. 324.053. UNAUTHORIZED INTERFERENCE WITH

13 INSTALLATION OR DISABLING OF COMPUTER

14 SOFTWARE

15 Sec. 324.054. OTHER PROHIBITED CONDUCT

16 [Sections 324.055-324.100 reserved for expansion]

17 SUBCHAPTER C. CIVIL REMEDIES

18 Sec. 324.101. PRIVATE ACTION

19 Sec. 324.102. CIVIL PENALTY; INJUNCTIVE RELIEF

20 CHAPTER 324. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 324.001. SHORT TITLE. This chapter may be cited as the
23 Consumer Protection Against Computer Spyware Act. (Bus. & Com.
24 Code, Sec. 48.001, as added Acts 79th Leg., R.S., Ch. 298.)

25 Sec. 324.002. DEFINITIONS. In this chapter:

26 (1) "Advertisement" means a communication that
27 includes the promotion of a commercial product or service,

1 including communication on an Internet website operated for a
2 commercial purpose.

3 (2) "Computer software" means a sequence of
4 instructions written in a programming language that is executed on
5 a computer. The term does not include:

6 (A) a web page; or

7 (B) a data component of a web page that cannot be
8 executed independently of that page.

9 (3) "Damage," with respect to a computer, means
10 significant impairment to the integrity or availability of data,
11 computer software, a system, or information.

12 (4) "Execute," with respect to computer software,
13 means to perform a function or carry out instructions.

14 (5) "Keystroke-logging function" means a function of a
15 computer software program that:

16 (A) records all keystrokes made by a person using
17 a computer; and

18 (B) transfers that information from the computer
19 to another person.

20 (6) "Owner or operator of a computer" means the owner
21 or lessee of a computer or an individual using a computer with the
22 authorization of the owner or lessee of the computer. The phrase
23 "owner of a computer," with respect to a computer sold at retail,
24 does not include a person who owned the computer before the date on
25 which the computer was sold.

26 (7) "Person" means an individual, partnership,
27 corporation, limited liability company, or other organization, or a

1 combination of those organizations.

2 (8) "Personally identifiable information," with
3 respect to an individual who is the owner or operator of a computer,
4 means:

5 (A) a first name or first initial in combination
6 with a last name;

7 (B) a home or other physical address, including
8 street name;

9 (C) an electronic mail address;

10 (D) a credit or debit card number;

11 (E) a bank account number;

12 (F) a password or access code associated with a
13 credit or debit card or bank account;

14 (G) a social security number, tax identification
15 number, driver's license number, passport number, or other
16 government-issued identification number; or

17 (H) any of the following information if the
18 information alone or in combination with other information
19 personally identifies the individual:

20 (i) account balances;

21 (ii) overdraft history; or

22 (iii) payment history. (Bus. & Com. Code,
23 Secs. 48.002(1), (3), (4), (5), (6), (7), (8), (9), as added Acts
24 79th Leg., R.S., Ch. 298.)

25 Sec. 324.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER. (a)
26 Section 324.052, other than Subdivision (1) of that section, and
27 Sections 324.053(4) and 324.054 do not apply to a

1 telecommunications carrier, cable operator, computer hardware or
2 software provider, or provider of information service or
3 interactive computer service that monitors or has interaction with
4 a subscriber's Internet or other network connection or service or a
5 protected computer for:

6 (1) a network or computer security purpose;

7 (2) diagnostics, technical support, or a repair
8 purpose;

9 (3) an authorized update of computer software or
10 system firmware;

11 (4) authorized remote system management; or

12 (5) detection or prevention of unauthorized use of or
13 fraudulent or other illegal activity in connection with a network,
14 service, or computer software, including scanning for and removing
15 software proscribed under this chapter.

16 (b) This chapter does not apply to:

17 (1) the use of a navigation device, any interaction
18 with a navigation device, or the installation or use of computer
19 software on a navigation device by a multichannel video programming
20 distributor, as defined by 47 U.S.C. Section 522(13), or video
21 programmer in connection with the provision of multichannel video
22 programming or other services offered over a multichannel video
23 programming system if the provision of the programming or other
24 service is subject to 47 U.S.C. Section 338(i) or 551; or

25 (2) the collection or disclosure of subscriber
26 information by a multichannel video programming distributor, as
27 defined by 47 U.S.C. Section 522(13), or video programmer in

1 connection with the provision of multichannel video programming or
2 other services offered over a multichannel video programming system
3 if the collection or disclosure of the information is subject to 47
4 U.S.C. Section 338(i) or 551. (Bus. & Com. Code, Sec. 48.003, as
5 added Acts 79th Leg., R.S., Ch. 298.)

6 Sec. 324.004. CAUSING COMPUTER SOFTWARE TO BE COPIED. For
7 purposes of this chapter, a person causes computer software to be
8 copied if the person distributes or transfers computer software or
9 a component of computer software. Causing computer software to be
10 copied does not include:

11 (1) transmitting or routing computer software or a
12 component of the software;

13 (2) providing intermediate temporary storage or
14 caching of software;

15 (3) providing a storage medium such as a compact disk;

16 (4) a website;

17 (5) the distribution of computer software by a third
18 party through a computer server; or

19 (6) providing an information location tool, such as a
20 directory, index, reference, pointer, or hypertext link, through
21 which the user of a computer is able to locate computer software.
22 (Bus. & Com. Code, Sec. 48.002(2), as added Acts 79th Leg., R.S.,
23 Ch. 298.)

24 Sec. 324.005. KNOWING VIOLATION. A person knowingly
25 violates Section 324.051, 324.052, or 324.053 if the person:

26 (1) acts with actual knowledge of the facts that
27 constitute the violation; or

1 (2) consciously avoids information that would
2 establish actual knowledge of those facts. (Bus. & Com. Code, Sec.
3 48.054, as added Acts 79th Leg., R.S., Ch. 298.)

4 Sec. 324.006. INTENTIONALLY DECEPTIVE MEANS. For purposes
5 of this chapter, a person is considered to have acted through
6 intentionally deceptive means if the person, with the intent to
7 deceive the owner or operator of a computer:

8 (1) intentionally makes a materially false or
9 fraudulent statement;

10 (2) intentionally makes a statement or uses a
11 description that omits or misrepresents material information; or

12 (3) intentionally and materially fails to provide to
13 the owner or operator any notice regarding the installation or
14 execution of computer software. (Bus. & Com. Code, Sec. 48.056, as
15 added Acts 79th Leg., R.S., Ch. 298.)

16 [Sections 324.007-324.050 reserved for expansion]

17 SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

18 Sec. 324.051. UNAUTHORIZED COLLECTION OR CULLING OF
19 PERSONALLY IDENTIFIABLE INFORMATION. A person other than the owner
20 or operator of the computer may not knowingly cause computer
21 software to be copied to a computer in this state and use the
22 software to:

23 (1) collect personally identifiable information
24 through intentionally deceptive means:

25 (A) by using a keystroke-logging function; or

26 (B) in a manner that correlates that information
27 with information regarding all or substantially all of the websites

1 visited by the owner or operator of the computer, other than
2 websites operated by the person collecting the information; or

3 (2) cull, through intentionally deceptive means, the
4 following kinds of personally identifiable information from the
5 consumer's computer hard drive for a purpose wholly unrelated to
6 any of the purposes of the software or service described to an owner
7 or operator of the computer:

8 (A) a credit or debit card number;

9 (B) a bank account number;

10 (C) a password or access code associated with a
11 credit or debit card number or a bank account;

12 (D) a social security number;

13 (E) account balances; or

14 (F) overdraft history. (Bus. & Com. Code, Sec.
15 48.051, as added Acts 79th Leg., R.S., Ch. 298.)

16 Sec. 324.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS OF
17 COMPUTER SETTINGS; COMPUTER DAMAGE. A person other than the owner
18 or operator of the computer may not knowingly cause computer
19 software to be copied to a computer in this state and use the
20 software to:

21 (1) modify, through intentionally deceptive means, a
22 setting that controls:

23 (A) the page that appears when an Internet
24 browser or a similar software program is launched to access and
25 navigate the Internet;

26 (B) the default provider or web proxy used to
27 access or search the Internet; or

- 1 (C) a list of bookmarks used to access web pages;
- 2 (2) take control of the computer by:
 - 3 (A) accessing or using the computer's modem or
 - 4 Internet service to:
 - 5 (i) cause damage to the computer;
 - 6 (ii) cause the owner or operator of the
 - 7 computer to incur financial charges for a service the owner or
 - 8 operator did not previously authorize; or
 - 9 (iii) cause a third party affected by the
 - 10 conduct to incur financial charges for a service the third party did
 - 11 not previously authorize; or
 - 12 (B) opening, without the consent of the owner or
 - 13 operator of the computer, an advertisement that:
 - 14 (i) is in the owner's or operator's Internet
 - 15 browser in a multiple, sequential, or stand-alone form; and
 - 16 (ii) cannot be closed by an ordinarily
 - 17 reasonable person using the computer without closing the browser or
 - 18 shutting down the computer;
 - 19 (3) modify settings on the computer that relate to
 - 20 access to or use of the Internet and protection of information for
 - 21 purposes of stealing personally identifiable information of the
 - 22 owner or operator of the computer; or
 - 23 (4) modify security settings on the computer relating
 - 24 to access to or use of the Internet for purposes of causing damage
 - 25 to one or more computers. (Bus. & Com. Code, Sec. 48.052, as added
 - 26 Acts 79th Leg., R.S., Ch. 298.)

27 Sec. 324.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION

1 OR DISABLING OF COMPUTER SOFTWARE. A person other than the owner or
2 operator of the computer may not knowingly cause computer software
3 to be copied to a computer in this state and use the software to:

4 (1) prevent, through intentionally deceptive means,
5 reasonable efforts of the owner or operator of the computer to block
6 the installation or execution of or to disable computer software by
7 causing computer software that the owner or operator has properly
8 removed or disabled to automatically reinstall or reactivate on the
9 computer;

10 (2) intentionally misrepresent to another that
11 computer software will be uninstalled or disabled by the actions of
12 the owner or operator of the computer;

13 (3) remove, disable, or render inoperative, through
14 intentionally deceptive means, security, antispymware, or antivirus
15 computer software installed on the computer;

16 (4) prevent reasonable efforts of the owner or
17 operator to block the installation of or to disable computer
18 software by:

19 (A) presenting the owner or operator with an
20 option to decline the installation of software knowing that, when
21 the option is selected, the installation process will continue to
22 proceed; or

23 (B) misrepresenting that software has been
24 disabled;

25 (5) change the name, location, or other designation of
26 computer software to prevent the owner from locating and removing
27 the software; or

1 (6) create randomized or intentionally deceptive file
2 names or random or intentionally deceptive directory folders,
3 formats, or registry entries to avoid detection and prevent the
4 owner from removing computer software. (Bus. & Com. Code, Sec.
5 48.053, as added Acts 79th Leg., R.S., Ch. 298.)

6 Sec. 324.054. OTHER PROHIBITED CONDUCT. A person other
7 than the owner or operator of the computer may not:

8 (1) induce the owner or operator of a computer in this
9 state to install a computer software component to the computer by
10 intentionally misrepresenting the extent to which the installation
11 is necessary:

- 12 (A) for security or privacy reasons;
13 (B) to open or view text; or
14 (C) to play a particular type of musical or other
15 content; or

16 (2) copy and execute or cause the copying and
17 execution of a computer software component to a computer in this
18 state in a deceptive manner with the intent to cause the owner or
19 operator of the computer to use the component in a manner that
20 violates this chapter. (Bus. & Com. Code, Sec. 48.055, as added
21 Acts 79th Leg., R.S., Ch. 298.)

22 [Sections 324.055-324.100 reserved for expansion]

23 SUBCHAPTER C. CIVIL REMEDIES

24 Sec. 324.101. PRIVATE ACTION. (a) Any of the following
25 persons, if adversely affected by the violation, may bring a civil
26 action against a person who violates this chapter:

- 27 (1) a provider of computer software;

- 1 (2) an owner of a web page or trademark;
- 2 (3) a telecommunications carrier;
- 3 (4) a cable operator; or
- 4 (5) an Internet service provider.

5 (b) Each separate violation of this chapter is an actionable
6 violation.

7 (c) In addition to any other remedy provided by law and
8 except as provided by Subsection (g), a person who brings an action
9 under this section may obtain:

10 (1) injunctive relief that restrains the violator from
11 continuing the violation;

12 (2) subject to Subsection (d), damages in an amount
13 equal to the greater of:

14 (A) actual damages arising from the violation;

15 or

16 (B) \$100,000 for each violation of the same
17 nature; or

18 (3) both injunctive relief and damages.

19 (d) The court may increase the amount of an award of actual
20 damages in an action brought under Subsection (c) to an amount not
21 to exceed three times the amount of actual damages sustained if the
22 court finds that the violation has reoccurred with sufficient
23 frequency to constitute a pattern or practice.

24 (e) A plaintiff who prevails in an action brought under
25 Subsection (c) is entitled to recover reasonable attorney's fees
26 and court costs.

27 (f) For purposes of Subsection (c), violations are of the

1 same nature if the violations consist of the same course of conduct
2 or action, regardless of the number of times the conduct or act
3 occurred.

4 (g) If a violation of Section 324.052 causes a
5 telecommunications carrier or cable operator to incur costs for the
6 origination, transport, or termination of a call triggered using
7 the modem of a customer of the telecommunications carrier or cable
8 operator as a result of the violation, the telecommunications
9 carrier or cable operator may in addition to any other remedy
10 provided by law:

11 (1) apply to a court for an order to enjoin the
12 violation;

13 (2) recover the charges the telecommunications
14 carrier or cable operator is obligated to pay to a
15 telecommunications carrier, a cable operator, another provider of
16 transmission capability, or an information service provider as a
17 result of the violation, including charges for the origination,
18 transport, or termination of the call;

19 (3) recover the costs of handling customer inquiries
20 or complaints with respect to amounts billed for calls as a result
21 of the violation;

22 (4) recover other costs, including court costs, and
23 reasonable attorney's fees; or

24 (5) both apply for injunctive relief and recover
25 charges and other costs as provided by this subsection. (Bus. & Com.
26 Code, Sec. 48.101, as added Acts 79th Leg., R.S., Ch. 298.)

27 Sec. 324.102. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A

1 person who violates this chapter is liable to this state for a civil
2 penalty in an amount not to exceed \$100,000 for each violation. The
3 attorney general may bring an action to recover the civil penalty
4 imposed by this subsection.

5 (b) If it appears to the attorney general that a person is
6 engaging in, has engaged in, or is about to engage in conduct that
7 violates this chapter, the attorney general may bring an action in
8 the name of the state against the person to restrain the violation
9 by a temporary restraining order or by a permanent or temporary
10 injunction.

11 (c) The attorney general is entitled to recover reasonable
12 expenses incurred in obtaining civil penalties or injunctive
13 relief, or both, under this section, including reasonable
14 attorney's fees and court costs. (Bus. & Com. Code, Sec. 48.102, as
15 added Acts 79th Leg., R.S., Ch. 298.)

16 CHAPTER 325. INTERNET FRAUD

17 Sec. 325.001. SHORT TITLE

18 Sec. 325.002. DEFINITIONS

19 Sec. 325.003. INAPPLICABILITY OF CHAPTER

20 Sec. 325.004. CREATION AND USE OF WEB PAGE OR DOMAIN

21 NAME FOR FRAUDULENT PURPOSE PROHIBITED

22 Sec. 325.005. TRANSMISSION OF FRAUDULENT ELECTRONIC

23 MAIL PROHIBITED

24 Sec. 325.006. CIVIL ACTION FOR INJUNCTIVE RELIEF OR

25 DAMAGES

26 CHAPTER 325. INTERNET FRAUD

27 Sec. 325.001. SHORT TITLE. This chapter may be cited as the

1 Anti-Phishing Act. (Bus. & Com. Code, Sec. 48.001, as added Acts
2 79th Leg., R.S., Ch. 544.)

3 Sec. 325.002. DEFINITIONS. In this chapter:

4 (1) "Electronic mail" means a message, file, or other
5 information that is transmitted through a local, regional, or
6 global computer network, regardless of whether the message, file,
7 or information is viewed, stored for retrieval at a later time,
8 printed, or filtered by a computer program that is designed or
9 intended to filter or screen the message, file, or information.

10 (2) "Electronic mail address" means a destination,
11 commonly expressed as a string of characters, to which electronic
12 mail may be sent or delivered.

13 (3) "Identifying information" has the meaning
14 assigned by Section 32.51, Penal Code.

15 (4) "Internet domain name" refers to a globally
16 unique, hierarchical reference to an Internet host or service that
17 is:

18 (A) assigned through a centralized Internet
19 naming authority; and

20 (B) composed of a series of character strings
21 separated by periods with the right-most string specifying the top
22 of the hierarchy.

23 (5) "Web page" means:

24 (A) a location that has a single uniform resource
25 locator with respect to the world wide web; or

26 (B) another location that can be accessed on the
27 Internet. (Bus. & Com. Code, Sec. 48.002, as added Acts 79th Leg.,

1 R.S., Ch. 544.)

2 Sec. 325.003. INAPPLICABILITY OF CHAPTER. This chapter
3 does not apply to a telecommunications provider's or Internet
4 service provider's good faith transmission or routing of, or
5 intermediate temporary storing or caching of, identifying
6 information. (Bus. & Com. Code, Sec. 48.006, as added Acts 79th
7 Leg., R.S., Ch. 544.)

8 Sec. 325.004. CREATION AND USE OF WEB PAGE OR DOMAIN NAME
9 FOR FRAUDULENT PURPOSE PROHIBITED. A person may not, with the
10 intent to engage in conduct involving the fraudulent use or
11 possession of identifying information of another person:

12 (1) create a web page or Internet domain name that is
13 represented as a legitimate online business without the
14 authorization of the registered owner of that business; and

15 (2) use that web page or a link to that web page, that
16 domain name, or another site on the Internet to induce, request, or
17 solicit another person to provide identifying information for a
18 purpose that the other person believes is legitimate. (Bus. & Com.
19 Code, Sec. 48.003, as added Acts 79th Leg., R.S., Ch. 544.)

20 Sec. 325.005. TRANSMISSION OF FRAUDULENT ELECTRONIC MAIL
21 PROHIBITED. A person may not, with the intent to engage in conduct
22 involving the fraudulent use or possession of identifying
23 information, send or cause to be sent to an electronic mail address
24 held by a resident of this state an electronic mail message that:

25 (1) is falsely represented as being sent by a
26 legitimate online business;

27 (2) refers or links the recipient to a web page that is

1 represented as being associated with the legitimate online
2 business; and

3 (3) directly or indirectly induces, requests, or
4 solicits the recipient to provide identifying information for a
5 purpose that the recipient believes is legitimate. (Bus. & Com.
6 Code, Sec. 48.004, as added Acts 79th Leg., R.S., Ch. 544.)

7 Sec. 325.006. CIVIL ACTION FOR INJUNCTIVE RELIEF OR
8 DAMAGES. (a) Any of the following persons may bring a civil action
9 against a person who violates this chapter:

10 (1) a person who is engaged in the business of
11 providing Internet access service to the public and is adversely
12 affected by the violation;

13 (2) an owner of a web page or trademark who is
14 adversely affected by the violation; or

15 (3) the attorney general.

16 (b) A person who brings an action under this section may
17 obtain:

18 (1) injunctive relief that restrains the violator from
19 continuing the violation;

20 (2) subject to Subsection (c), damages in an amount
21 equal to the greater of:

22 (A) actual damages arising from the violation; or

23 (B) \$100,000 for each violation of the same
24 nature; or

25 (3) both injunctive relief and damages.

26 (c) The court may increase the amount of an award of actual
27 damages in an action brought under this section to an amount not to

1 exceed three times the actual damages sustained if the court finds
2 that the violation has reoccurred with sufficient frequency to
3 constitute a pattern or practice.

4 (d) A plaintiff who prevails in an action brought under this
5 section is entitled to recover reasonable attorney's fees and court
6 costs.

7 (e) For purposes of this section, violations are of the same
8 nature if the violations consist of the same course of conduct or
9 action, regardless of the number of times the conduct or act
10 occurred. (Bus. & Com. Code, Sec. 48.005, as added Acts 79th Leg.,
11 R.S., Ch. 544.)

12 TITLE 11. PERSONAL IDENTITY INFORMATION

13 SUBTITLE A. IDENTIFYING INFORMATION

14 CHAPTER 501. PROTECTION OF DRIVER'S LICENSE AND SOCIAL SECURITY
15 NUMBERS

16 SUBCHAPTER A. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

17 Sec. 501.001. CERTAIN USES OF SOCIAL SECURITY NUMBER
18 PROHIBITED

19 Sec. 501.002. CERTAIN USES OF SOCIAL SECURITY NUMBER
20 PROHIBITED; REMEDIES

21 [Sections 501.003-501.050 reserved for expansion]

22 SUBCHAPTER B. PRIVACY POLICY TO PROTECT SOCIAL SECURITY NUMBERS

23 Sec. 501.051. INAPPLICABILITY OF SUBCHAPTER

24 Sec. 501.052. PRIVACY POLICY NECESSARY TO REQUIRE
25 DISCLOSURE OF SOCIAL SECURITY NUMBER

26 Sec. 501.053. CIVIL PENALTY; INJUNCTION

27 [Sections 501.054-501.100 reserved for expansion]

1 SUBCHAPTER C. OTHER RESTRICTIONS TO PROTECT DRIVER'S LICENSE AND
2 SOCIAL SECURITY NUMBERS

3 Sec. 501.101. USE OF CONSUMER DRIVER'S LICENSE OR
4 SOCIAL SECURITY NUMBER BY MERCHANT OR
5 CERTAIN THIRD PARTY

6 Sec. 501.102. CIVIL PENALTY; INJUNCTION

7 CHAPTER 501. PROTECTION OF DRIVER'S LICENSE AND SOCIAL SECURITY
8 NUMBERS

9 SUBCHAPTER A. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

10 Sec. 501.001. CERTAIN USES OF SOCIAL SECURITY NUMBER
11 PROHIBITED. (a) A person, other than a government or a
12 governmental subdivision or agency, may not:

13 (1) intentionally communicate or otherwise make
14 available to the public an individual's social security number;

15 (2) display an individual's social security number on
16 a card or other device required to access a product or service
17 provided by the person;

18 (3) require an individual to transmit the individual's
19 social security number over the Internet unless:

20 (1) the Internet connection is secure; or

21 (2) the social security number is encrypted;

22 (4) require an individual's social security number for
23 access to an Internet website unless a password or unique personal
24 identification number or other authentication device is also
25 required for access; or

26 (5) except as provided by Subsection (f), print an
27 individual's social security number on any material sent by mail,

1 unless state or federal law requires that social security number to
2 be included in the material.

3 (b) A person using an individual's social security number
4 before January 1, 2005, in a manner prohibited by Subsection (a) may
5 continue that use if:

6 (1) the use is continuous; and

7 (2) beginning January 1, 2006, the person provides to
8 the individual an annual disclosure stating that, on written
9 request from the individual, the person will stop using the
10 individual's social security number in a manner prohibited by
11 Subsection (a).

12 (c) A person, other than a government or a governmental
13 subdivision or agency, may not deny a service to an individual
14 because the individual makes a written request under Subsection
15 (b)(2).

16 (d) If a person receives a written request from an
17 individual directing the person to stop using the individual's
18 social security number in a manner prohibited by Subsection (a),
19 the person shall comply with the request not later than the 30th day
20 after the date the request is received. The person may not impose a
21 fee for complying with the request.

22 (e) This section does not apply to:

23 (1) the collection, use, or release of a social
24 security number required by state or federal law, including Chapter
25 552, Government Code;

26 (2) the use of a social security number for internal
27 verification or administrative purposes;

1 (3) a document that is recorded or required to be open
2 to the public under Chapter 552, Government Code;

3 (4) a court record; or

4 (5) an institution of higher education if the use of a
5 social security number by the institution is regulated by Chapter
6 51, Education Code, or another provision of the Education Code.

7 (f) Subsection (a)(5) does not apply to an application or
8 form sent by mail, including a document sent:

9 (1) as part of an application or enrollment process;

10 (2) to establish, amend, or terminate an account,
11 contract, or policy; or

12 (3) to confirm the accuracy of a social security
13 number. (Bus. & Com. Code, Sec. 35.58, as added Acts 78th Leg.,
14 R.S., Ch. 1326.)

15 Sec. 501.002. CERTAIN USES OF SOCIAL SECURITY NUMBER
16 PROHIBITED; REMEDIES. (a) A person may not print an individual's
17 social security number on a card or other device required to access
18 a product or service provided by the person unless the individual
19 has requested in writing that printing. The person may not require
20 a request for that printing as a condition of receipt of or access
21 to a product or service provided by the person.

22 (b) A person who violates this section is liable to this
23 state for a civil penalty in an amount not to exceed \$500 for each
24 violation. The attorney general or the prosecuting attorney in the
25 county in which the violation occurs may bring an action to recover
26 the civil penalty imposed under this section.

27 (c) The attorney general may bring an action in the name of

1 the state to restrain or enjoin a person from violating this
2 section.

3 (d) This section does not apply to:

4 (1) the collection, use, or release of a social
5 security number required by state or federal law, including Chapter
6 552, Government Code; or

7 (2) the use of a social security number for internal
8 verification or administrative purposes.

9 (e) This section applies to a card or other device issued in
10 connection with an insurance policy only if the policy is
11 delivered, issued for delivery, or renewed on or after March 1,
12 2005. (Acts 78th Leg., R.S., Ch. 341, Sec. 2(b) (part); Bus. & Com.
13 Code, Sec. 35.58, as added Acts 78th Leg., R.S., Ch. 341.)

14 [Sections 501.003-501.050 reserved for expansion]

15 SUBCHAPTER B. PRIVACY POLICY TO PROTECT SOCIAL SECURITY NUMBERS

16 Sec. 501.051. INAPPLICABILITY OF SUBCHAPTER. This
17 subchapter does not apply to:

18 (1) a person who is required to maintain and
19 disseminate a privacy policy under:

20 (A) the Gramm-Leach-Bliley Act (15 U.S.C.
21 Sections 6801 to 6809);

22 (B) the Family Educational Rights and Privacy Act
23 of 1974 (20 U.S.C. Section 1232g); or

24 (C) the Health Insurance Portability and
25 Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);

26 (2) a covered entity under rules adopted by the
27 commissioner of insurance relating to insurance consumer health

1 information privacy or insurance consumer financial information
2 privacy;

3 (3) a governmental body, as defined by Section
4 552.003, Government Code, other than a municipally owned utility;
5 or

6 (4) a person with respect to a loan transaction, if the
7 person is not engaged in the business of making loans. (Bus. & Com.
8 Code, Sec. 35.581(c), as added Acts 79th Leg., R.S., Ch. 198.)

9 Sec. 501.052. PRIVACY POLICY NECESSARY TO REQUIRE
10 DISCLOSURE OF SOCIAL SECURITY NUMBER. (a) A person may not require
11 an individual to disclose the individual's social security number
12 to obtain goods or services from or enter into a business
13 transaction with the person unless the person:

14 (1) adopts a privacy policy as provided by Subsection
15 (b);

16 (2) makes the privacy policy available to the
17 individual; and

18 (3) maintains under the privacy policy the
19 confidentiality and security of the social security number
20 disclosed to the person.

21 (b) A privacy policy adopted under this section must
22 include:

23 (1) how personal information is collected;

24 (2) how and when the personal information is used;

25 (3) how the personal information is protected;

26 (4) who has access to the personal information; and

27 (5) the method of disposal of the personal

1 information. (Bus. & Com. Code, Secs. 35.581(a), (b), as added Acts
2 79th Leg., R.S., Ch. 198.)

3 Sec. 501.053. CIVIL PENALTY; INJUNCTION. (a) A person who
4 violates Section 501.052(a) is liable to this state for a civil
5 penalty in an amount not to exceed \$500 for each calendar month
6 during which a violation occurs. The civil penalty may not be
7 imposed for more than one violation that occurs in a month. The
8 attorney general or the prosecuting attorney in the county in which
9 the violation occurs may bring an action to recover the civil
10 penalty imposed under this section.

11 (b) The attorney general may bring an action in the name of
12 the state to restrain or enjoin a person from violating Section
13 501.052(a). (Bus. & Com. Code, Secs. 35.581(d), (e), as added Acts
14 79th Leg., R.S., Ch. 198.)

15 [Sections 501.054-501.100 reserved for expansion]

16 SUBCHAPTER C. OTHER RESTRICTIONS TO PROTECT DRIVER'S LICENSE AND
17 SOCIAL SECURITY NUMBERS

18 Sec. 501.101. USE OF CONSUMER DRIVER'S LICENSE OR SOCIAL
19 SECURITY NUMBER BY MERCHANT OR CERTAIN THIRD PARTY. (a) A merchant
20 or a third party under contract with a merchant who requires a
21 consumer returning merchandise to provide the consumer's driver's
22 license or social security number may use the number or numbers
23 provided by the consumer solely for identification purposes if the
24 consumer does not have a valid receipt for the item being returned
25 and is seeking a cash, credit, or store credit refund.

26 (b) A merchant or a third party under contract with a
27 merchant may not disclose a consumer's driver's license or social

1 security number to any other third party, including a merchant, not
2 involved in the initial transaction.

3 (c) A merchant or a third party under contract with a
4 merchant may use a consumer's driver's license or social security
5 number only to monitor, investigate, or prosecute fraudulent return
6 of merchandise.

7 (d) A merchant or a third party under contract with a
8 merchant shall destroy or arrange for the destruction of records
9 containing the consumer's driver's license or social security
10 number at the expiration of six months from the date of the last
11 transaction. (Bus. & Com. Code, Secs. 35.581(a), (b), (c), (d), as
12 added Acts 79th Leg., R.S., Ch. 946.)

13 Sec. 501.102. CIVIL PENALTY; INJUNCTION. (a) A person who
14 violates this subchapter is liable to this state for a civil penalty
15 in an amount not to exceed \$500 for each violation. The attorney
16 general or the prosecuting attorney in the county in which the
17 violation occurs may bring an action to recover the civil penalty
18 imposed under this section.

19 (b) The attorney general may bring an action in the name of
20 the state to restrain or enjoin a person from violating this
21 subchapter. (Bus. & Com. Code, Secs. 35.581(e), (f), as added Acts
22 79th Leg., R.S., Ch. 946.)

23 CHAPTER 502. PROTECTION OF IDENTIFYING FINANCIAL INFORMATION

24 Sec. 502.001. WARNING SIGN ABOUT IDENTITY THEFT FOR
25 RESTAURANT OR BAR EMPLOYEES

26 Sec. 502.002. BUSINESS RECEIPT CONTAINING CREDIT CARD
27 OR DEBIT CARD INFORMATION

1 Sec. 502.003. DELIVERY OF CHECK FORM

2 CHAPTER 502. PROTECTION OF IDENTIFYING FINANCIAL INFORMATION

3 Sec. 502.001. WARNING SIGN ABOUT IDENTITY THEFT FOR
4 RESTAURANT OR BAR EMPLOYEES. (a) In this section:

5 (1) "Credit card" means an identification card, plate,
6 coupon, book, or number or any other device authorizing a
7 designated person or bearer to obtain property or service on
8 credit.

9 (2) "Debit card" means an identification card, plate,
10 coupon, book, or number or any other device authorizing a
11 designated person or bearer to communicate a request to an unmanned
12 teller machine or a customer convenience terminal or to obtain
13 property or services by debit to an account at a financial
14 institution.

15 (b) This section applies only to a restaurant or bar that
16 accepts credit cards or debit cards from customers in the ordinary
17 course of business.

18 (c) A restaurant or bar owner shall display in a prominent
19 place on the premises of the restaurant or bar a sign stating in
20 letters at least one-half inch high: "UNDER SECTION 32.51, PENAL
21 CODE, IT IS A STATE JAIL FELONY (PUNISHABLE BY CONFINEMENT IN A
22 STATE JAIL FOR NOT MORE THAN TWO YEARS) TO OBTAIN, POSSESS,
23 TRANSFER, OR USE A CUSTOMER'S DEBIT CARD OR CREDIT CARD NUMBER
24 WITHOUT THE CUSTOMER'S CONSENT."

25 (d) The restaurant or bar owner shall display the sign in
26 English and in another language spoken by a substantial portion of
27 the employees of the restaurant or bar as their familiar language.

1 (e) A restaurant or bar owner who fails to comply with this
2 section commits an offense. An offense under this subsection is a
3 misdemeanor punishable by a fine not to exceed \$25.

4 (f) It is a defense to prosecution under Subsection (e) that
5 the restaurant or bar owner charged with the offense produces to the
6 court satisfactory evidence that the person displayed the sign
7 required by Subsection (c) not later than 48 hours after the person
8 received a citation for an offense under Subsection (e). If the
9 court is satisfied with the evidence produced by the person, the
10 court shall dismiss the charge. (Bus. & Com. Code, Sec. 35.60.)

11 Sec. 502.002. BUSINESS RECEIPT CONTAINING CREDIT CARD OR
12 DEBIT CARD INFORMATION. (a) A person who accepts a credit card or
13 debit card for the transaction of business may not print on a
14 receipt or other document that evidences the transaction and is
15 provided to a cardholder more than the last four digits of the
16 credit card or debit card account number or the month and year that
17 the credit card or debit card expires.

18 (b) This section does not apply to a transaction in which
19 the sole means of recording a person's credit card or debit card
20 account number on a receipt or other document evidencing the
21 transaction is by handwriting or an imprint or copy of the credit
22 card or debit card.

23 (c) A person who provides, leases, or sells a cash register
24 or other machine used to print a receipt or other document
25 evidencing a credit card or debit card transaction shall provide
26 notice of the requirements of this section to the recipient,
27 lessee, or buyer, as applicable, of the machine.

1 (d) A person who violates Subsection (a) is liable to this
2 state for a civil penalty in an amount not to exceed \$500 for each
3 calendar month in which a violation occurs. The civil penalty may
4 not be imposed for more than one violation that occurs in a month.
5 The attorney general or the prosecuting attorney in the county in
6 which the violation occurs may bring an action to recover the civil
7 penalty imposed under this section.

8 (e) The attorney general may bring an action in the name of
9 the state to restrain or enjoin a person from violating Subsection
10 (a).

11 (f) A court may not certify an action brought under this
12 section as a class action. (Bus. & Com. Code, Sec. 35.61.)

13 Sec. 502.003. DELIVERY OF CHECK FORM. (a) In this section:

14 (1) "Addressee" means a person to whom a check form is
15 sent.

16 (2) "Check form" means a device for the transmission
17 or payment of money that:

18 (A) is not a negotiable instrument under Section
19 3.104;

20 (B) if completed would be a check as defined by
21 Section 3.104; and

22 (C) is printed with information relating to the
23 financial institution on which the completed check may be drawn.

24 (3) "Check form provider" means a business that
25 provides check forms to a customer for a personal or business
26 account.

27 (4) "Courier" means an entity that delivers parcels

1 for a fee.

2 (b) If an addressee requests that a check form provider
3 employ courier delivery of a check form with signature required,
4 and that service is available in the delivery area of the addressee,
5 the entity arranging for courier delivery in compliance with the
6 addressee's request must provide the addressee with the option to
7 require that the signature of the addressee, or the representative
8 of the addressee, be obtained on delivery.

9 (c) The option under Subsection (b) to require the signature
10 of the addressee or representative may be provided:

- 11 (1) on a printed check form order form;
12 (2) on an electronic check form order form where check
13 form orders are offered on the Internet;
14 (3) by electronic mail to an address established for
15 that purpose by the entity making the offer; or
16 (4) by another method reasonably designed to
17 effectively communicate the addressee's intent.

18 (d) An entity that arranges for the courier delivery of a
19 check form to an addressee as requested under Subsection (b) shall
20 notify the courier of the check form that the signature of the
21 addressee or a representative of the addressee is required for
22 delivery under that subsection.

23 (e) If the addressee suffers a pecuniary loss because of the
24 use of a check form stolen at the time of delivery to the addressee,
25 a civil penalty of not more than \$1,000 for each delivery may be
26 imposed on:

- 27 (1) an entity that violates Subsection (b), (c), or

1 (d); or

2 (2) a courier that:"

3 (A) is properly notified under Subsection (d)
4 that a signature is required for delivery; and

5 (B) delivers the check form without obtaining the
6 signature of the addressee or a representative of the addressee.

7 (f) The attorney general may bring an action to recover a
8 civil penalty imposed under Subsection (e). The attorney general
9 may recover reasonable expenses incurred in obtaining the civil
10 penalty, including court costs, reasonable attorney's fees,
11 investigative costs, witness fees, and deposition expenses. (Bus.
12 & Com. Code, Sec. 35.395.)

13 CHAPTER 503. BIOMETRIC IDENTIFIERS

14 Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER

15 CHAPTER 503. BIOMETRIC IDENTIFIERS

16 Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER. (a)

17 In this section, "biometric identifier" means a retina or iris
18 scan, fingerprint, voiceprint, or record of hand or face geometry.

19 (b) A person may not capture a biometric identifier of an
20 individual for a commercial purpose unless the person:

21 (1) informs the individual before capturing the
22 biometric identifier; and

23 (2) receives the individual's consent to capture the
24 biometric identifier.

25 (c) A person who possesses a biometric identifier of an
26 individual:

27 (1) may not sell, lease, or otherwise disclose the

1 biometric identifier to another person unless:

2 (A) the individual consents to the disclosure;

3 (B) the disclosure completes a financial
4 transaction that the individual requested or authorized;

5 (C) the disclosure is required or permitted by a
6 federal statute or by a state statute other than Chapter 552,
7 Government Code; or

8 (D) the disclosure is made by or to a law
9 enforcement agency for a law enforcement purpose; and

10 (2) shall store, transmit, and protect from disclosure
11 the biometric identifier using reasonable care and in a manner that
12 is the same as or more protective than the manner in which the
13 person stores, transmits, and protects any other confidential
14 information the person possesses.

15 (d) A person who violates this section is subject to a civil
16 penalty of not more than \$25,000 for each violation. The attorney
17 general may bring an action to recover the civil penalty. (Bus. &
18 Com. Code, Sec. 35.50.)

19 CHAPTER 504. PROHIBITED USE OF CRIME VICTIM OR MOTOR VEHICLE

20 ACCIDENT INFORMATION

21 Sec. 504.001. DEFINITIONS

22 Sec. 504.002. PROHIBITION ON USE FOR SOLICITATION OR

23 SALE OF INFORMATION

24 CHAPTER 504. PROHIBITED USE OF CRIME VICTIM OR MOTOR VEHICLE

25 ACCIDENT INFORMATION

26 Sec. 504.001. DEFINITIONS. In this chapter:

27 (1) "Crime victim information" means information

1 that:

2 (A) is collected or prepared by a law enforcement
3 agency; and

4 (B) identifies or serves to identify a person
5 who, according to a record of the agency, may have been the victim
6 of a crime in which:

7 (i) physical injury to the person occurred
8 or was attempted; or

9 (ii) the offender entered or attempted to
10 enter the dwelling of the person.

11 (2) "Motor vehicle accident information" means
12 information that:

13 (A) is collected or prepared by a law enforcement
14 agency; and

15 (B) identifies or serves to identify a person
16 who, according to a record of the agency, may have been involved in
17 a motor vehicle accident. (Bus. & Com. Code, Sec. 35.54(a).)

18 Sec. 504.002. PROHIBITION ON USE FOR SOLICITATION OR SALE
19 OF INFORMATION. (a) A person who possesses crime victim or motor
20 vehicle accident information that the person obtained or knows was
21 obtained from a law enforcement agency may not:

22 (1) use the information to contact directly any of the
23 following persons for the purpose of soliciting business from the
24 person:

25 (A) a crime victim;

26 (B) a person who was involved in a motor vehicle
27 accident; or

1 (C) a member of the family of a person described
2 by Paragraph (A) or (B); or

3 (2) sell the information to another person for
4 financial gain.

5 (b) The attorney general may bring an action against a
6 person who violates Subsection (a) pursuant to Section 17.47.

7 (c) A person commits an offense if the person violates
8 Subsection (a). An offense under this subsection is a Class C
9 misdemeanor unless the defendant has been previously convicted
10 under this section three or more times, in which event the offense
11 is a felony of the third degree. (Bus. & Com. Code, Secs. 35.54(b),
12 (c), (d).)

13 [Chapters 505-520 reserved for expansion]

14 SUBTITLE B. IDENTITY THEFT

15 CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 521.001. SHORT TITLE

18 Sec. 521.002. DEFINITIONS

19 [Sections 521.003-521.050 reserved for expansion]

20 SUBCHAPTER B. IDENTITY THEFT

21 Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF
22 PERSONAL IDENTIFYING INFORMATION

23 Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE
24 PERSONAL INFORMATION

25 Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH
26 OF SECURITY OF COMPUTERIZED DATA

27 [Sections 521.054-521.100 reserved for expansion]

1 SUBCHAPTER C. COURT ORDER DECLARING INDIVIDUAL

2 A VICTIM OF IDENTITY THEFT

3 Sec. 521.101. APPLICATION FOR COURT ORDER TO DECLARE
4 INDIVIDUAL A VICTIM OF IDENTITY THEFT

5 Sec. 521.102. PRESUMPTION OF APPLICANT'S STATUS AS
6 VICTIM

7 Sec. 521.103. ISSUANCE OF ORDER; CONTENTS

8 Sec. 521.104. CONFIDENTIALITY OF ORDER

9 Sec. 521.105. GROUNDS FOR VACATING ORDER

10 [Sections 521.106-521.150 reserved for expansion]

11 SUBCHAPTER D. REMEDIES

12 Sec. 521.151. CIVIL PENALTY; INJUNCTION

13 Sec. 521.152. DECEPTIVE TRADE PRACTICE

14 CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 521.001. SHORT TITLE. This chapter may be cited as the
17 Identity Theft Enforcement and Protection Act. (Bus. & Com. Code,
18 Sec. 48.001, as added Acts 79th Leg., R.S., Ch. 294.)

19 Sec. 521.002. DEFINITIONS. (a) In this chapter:

20 (1) "Personal identifying information" means
21 information that alone or in conjunction with other information
22 identifies an individual, including an individual's:

23 (A) name, social security number, date of birth,
24 or government-issued identification number;

25 (B) mother's maiden name;

26 (C) unique biometric data, including the
27 individual's fingerprint, voice print, and retina or iris image;

1 (D) unique electronic identification number,
2 address, or routing code; and

3 (E) telecommunication access device as defined
4 by Section 32.51, Penal Code.

5 (2) "Sensitive personal information" means, subject
6 to Subsection (b), an individual's first name or first initial and
7 last name in combination with any one or more of the following
8 items, if the name and the items are not encrypted:

9 (A) social security number;

10 (B) driver's license number or government-issued
11 identification number; or

12 (C) account number or credit or debit card number
13 in combination with any required security code, access code, or
14 password that would permit access to an individual's financial
15 account.

16 (3) "Victim" means a person whose identifying
17 information is used by an unauthorized person.

18 (b) For purposes of this chapter, the term "sensitive
19 personal information" does not include publicly available
20 information that is lawfully made available to the public from the
21 federal government or a state or local government. (Bus. & Com.
22 Code, Sec. 48.002, as added Acts 79th Leg., R.S., Ch. 294.)

23 [Sections 521.003-521.050 reserved for expansion]

24 SUBCHAPTER B. IDENTITY THEFT

25 Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF PERSONAL
26 IDENTIFYING INFORMATION. (a) A person may not obtain, possess,
27 transfer, or use personal identifying information of another person

1 without the other person's consent and with intent to obtain a good,
2 a service, insurance, an extension of credit, or any other thing of
3 value in the other person's name.

4 (b) It is a defense to an action brought under this section
5 that an act by a person:

6 (1) is covered by the Fair Credit Reporting Act (15
7 U.S.C. Section 1681 et seq.); and

8 (2) is in compliance with that Act and regulations
9 adopted under that Act.

10 (c) This section does not apply to:

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

13 (2) a covered entity as defined by Section 601.001 or
14 602.001, Insurance Code. (Bus. & Com. Code, Sec. 48.101, as added
15 Acts 79th Leg., R.S., Ch. 294.)

16 Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL
17 INFORMATION. (a) A business shall implement and maintain
18 reasonable procedures, including taking any appropriate corrective
19 action, to protect from unlawful use or disclosure any sensitive
20 personal information collected or maintained by the business in the
21 regular course of business.

22 (b) A business shall destroy or arrange for the destruction
23 of customer records containing sensitive personal information
24 within the business's custody or control that are not to be retained
25 by the business by:

26 (1) shredding;

27 (2) erasing; or

1 (3) otherwise modifying the sensitive personal
2 information in the records to make the information unreadable or
3 indecipherable through any means.

4 (c) This section does not apply to a financial institution
5 as defined by 15 U.S.C. Section 6809. (Bus. & Com. Code, Sec.
6 48.102, as added Acts 79th Leg., R.S., Ch. 294.)

7 Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF
8 SECURITY OF COMPUTERIZED DATA. (a) In this section, "breach of
9 system security" means unauthorized acquisition of computerized
10 data that compromises the security, confidentiality, or integrity
11 of sensitive personal information maintained by a person. Good
12 faith acquisition of sensitive personal information by an employee
13 or agent of the person for the purposes of the person is not a breach
14 of system security unless the person uses or discloses the
15 sensitive personal information in an unauthorized manner.

16 (b) A person who conducts business in this state and owns or
17 licenses computerized data that includes sensitive personal
18 information shall disclose any breach of system security, after
19 discovering or receiving notification of the breach, to any
20 resident of this state whose sensitive personal information was, or
21 is reasonably believed to have been, acquired by an unauthorized
22 person. The disclosure shall be made as quickly as possible, except
23 as provided by Subsection (d) or as necessary to determine the scope
24 of the breach and restore the reasonable integrity of the data
25 system.

26 (c) Any person who maintains computerized data that
27 includes sensitive personal information not owned by the person

1 shall notify the owner or license holder of the information of any
2 breach of system security immediately after discovering the breach,
3 if the sensitive personal information was, or is reasonably
4 believed to have been, acquired by an unauthorized person.

5 (d) A person may delay providing notice as required by
6 Subsection (b) or (c) at the request of a law enforcement agency
7 that determines that the notification will impede a criminal
8 investigation. The notification shall be made as soon as the law
9 enforcement agency determines that the notification will not
10 compromise the investigation.

11 (e) A person may give notice as required by Subsection (b)
12 or (c) by providing:

- 13 (1) written notice;
- 14 (2) electronic notice, if the notice is provided in
15 accordance with 15 U.S.C. Section 7001; or
- 16 (3) notice as provided by Subsection (f).

17 (f) If the person required to give notice under Subsection
18 (b) or (c) demonstrates that the cost of providing notice would
19 exceed \$250,000, the number of affected persons exceeds 500,000, or
20 the person does not have sufficient contact information, the notice
21 may be given by:

- 22 (1) electronic mail, if the person has electronic mail
23 addresses for the affected persons;
- 24 (2) conspicuous posting of the notice on the person's
25 website; or
- 26 (3) notice published in or broadcast on major
27 statewide media.

1 (g) Notwithstanding Subsection (e), a person who maintains
2 the person's own notification procedures as part of an information
3 security policy for the treatment of sensitive personal information
4 that complies with the timing requirements for notice under this
5 section complies with this section if the person notifies affected
6 persons in accordance with that policy.

7 (h) If a person is required by this section to notify at one
8 time more than 10,000 persons of a breach of system security, the
9 person shall also notify each consumer reporting agency, as defined
10 by 15 U.S.C. Section 1681a, that maintains files on consumers on a
11 nationwide basis, of the timing, distribution, and content of the
12 notices. The person shall provide the notice required by this
13 subsection without unreasonable delay. (Bus. & Com. Code, Sec.
14 48.103, as added Acts 79th Leg., R.S., Ch. 294.)

15 [Sections 521.054-521.100 reserved for expansion]

16 SUBCHAPTER C. COURT ORDER DECLARING INDIVIDUAL

17 A VICTIM OF IDENTITY THEFT

18 Sec. 521.101. APPLICATION FOR COURT ORDER TO DECLARE
19 INDIVIDUAL A VICTIM OF IDENTITY THEFT. (a) A person who is injured
20 by a violation of Section 521.051 or who has filed a criminal
21 complaint alleging commission of an offense under Section 32.51,
22 Penal Code, may file an application with a district court for the
23 issuance of an order declaring that the person is a victim of
24 identity theft.

25 (b) A person may file an application under this section
26 regardless of whether the person is able to identify each person who
27 allegedly transferred or used the person's identifying information

1 in an unlawful manner. (Bus. & Com. Code, Sec. 48.202(a), as added
2 Acts 79th Leg., R.S., Ch. 294.)

3 Sec. 521.102. PRESUMPTION OF APPLICANT'S STATUS AS VICTIM.
4 An applicant under Section 521.101 is presumed to be a victim of
5 identity theft under this subchapter if the person charged with an
6 offense under Section 32.51, Penal Code, is convicted of the
7 offense. (Bus. & Com. Code, Sec. 48.202(b), as added Acts 79th
8 Leg., R.S., Ch. 294.)

9 Sec. 521.103. ISSUANCE OF ORDER; CONTENTS. (a) After
10 notice and hearing, if the court is satisfied by a preponderance of
11 the evidence that an applicant under Section 521.101 has been
12 injured by a violation of Section 521.051 or is the victim of an
13 offense under Section 32.51, Penal Code, the court shall enter an
14 order declaring that the applicant is a victim of identity theft
15 resulting from a violation of Section 521.051 or an offense under
16 Section 32.51, Penal Code, as appropriate.

17 (b) An order under this section must contain:

18 (1) any known information identifying the violator or
19 person charged with the offense;

20 (2) the specific personal identifying information and
21 any related document used to commit the alleged violation or
22 offense; and

23 (3) information identifying any financial account or
24 transaction affected by the alleged violation or offense,
25 including:

26 (A) the name of the financial institution in
27 which the account is established or of the merchant involved in the

1 transaction, as appropriate;

2 (B) any relevant account numbers;

3 (C) the dollar amount of the account or
4 transaction affected by the alleged violation or offense; and

5 (D) the date of the alleged violation or offense.

6 (Bus. & Com. Code, Sec. 48.202(c), as added Acts 79th Leg., R.S.,
7 Ch. 294.)

8 Sec. 521.104. CONFIDENTIALITY OF ORDER. (a) An order
9 issued under Section 521.103 must be sealed because of the
10 confidential nature of the information required to be included in
11 the order. The order may be opened and the order or a copy of the
12 order may be released only:

13 (1) to the proper officials in a civil proceeding
14 brought by or against the victim arising or resulting from a
15 violation of this chapter, including a proceeding to set aside a
16 judgment obtained against the victim;

17 (2) to the victim for the purpose of submitting the
18 copy of the order to a governmental entity or private business to:

19 (A) prove that a financial transaction or account
20 of the victim was directly affected by a violation of this chapter
21 or the commission of an offense under Section 32.51, Penal Code; or

22 (B) correct any record of the entity or business
23 that contains inaccurate or false information as a result of the
24 violation or offense;

25 (3) on order of the judge; or

26 (4) as otherwise required or provided by law.

27 (b) A copy of an order provided to a person under Subsection

1 (a)(1) must remain sealed throughout and after the civil
2 proceeding.

3 (c) Information contained in a copy of an order provided to
4 a governmental entity or business under Subsection (a)(2) is
5 confidential and may not be released to another person except as
6 otherwise required or provided by law. (Bus. & Com. Code, Secs.
7 48.202(d), (f), as added Acts 79th Leg., R.S., Ch. 294.)

8 Sec. 521.105. GROUNDS FOR VACATING ORDER. A court at any
9 time may vacate an order issued under Section 521.103 if the court
10 finds that the application filed under Section 521.101 or any
11 information submitted to the court by the applicant contains a
12 fraudulent misrepresentation or a material misrepresentation of
13 fact. (Bus. & Com. Code, Sec. 48.202(e), as added Acts 79th Leg.,
14 R.S., Ch. 294.)

15 [Sections 521.106-521.150 reserved for expansion]

16 SUBCHAPTER D. REMEDIES

17 Sec. 521.151. CIVIL PENALTY; INJUNCTION. (a) A person who
18 violates this chapter is liable to this state for a civil penalty of
19 at least \$2,000 but not more than \$50,000 for each violation. The
20 attorney general may bring an action to recover the civil penalty
21 imposed under this subsection.

22 (b) If it appears to the attorney general that a person is
23 engaging in, has engaged in, or is about to engage in conduct that
24 violates this chapter, the attorney general may bring an action in
25 the name of the state against the person to restrain the violation
26 by a temporary restraining order or by a permanent or temporary
27 injunction.

1 (c) An action brought under Subsection (b) must be filed in
2 a district court in Travis County or:

3 (1) in any county in which the violation occurred; or

4 (2) in the county in which the victim resides,
5 regardless of whether the alleged violator has resided, worked, or
6 transacted business in the county in which the victim resides.

7 (d) The attorney general is not required to give a bond in an
8 action under this section.

9 (e) In an action under this section, the court may grant any
10 other equitable relief that the court considers appropriate to:

11 (1) prevent any additional harm to a victim of
12 identity theft or a further violation of this chapter; or

13 (2) satisfy any judgment entered against the
14 defendant, including issuing an order to appoint a receiver,
15 sequester assets, correct a public or private record, or prevent
16 the dissipation of a victim's assets.

17 (f) The attorney general is entitled to recover reasonable
18 expenses, including reasonable attorney's fees, court costs, and
19 investigatory costs, incurred in obtaining injunctive relief or
20 civil penalties, or both, under this section. Amounts collected by
21 the attorney general under this section shall be deposited in the
22 general revenue fund and may be appropriated only for the
23 investigation and prosecution of other cases under this chapter.

24 (g) The fees associated with an action under this section
25 are the same as in a civil case, but the fees may be assessed only
26 against the defendant. (Bus. & Com. Code, Sec. 48.201, as added
27 Acts 79th Leg., R.S., Ch. 294.)

1 Sec. 521.152. DECEPTIVE TRADE PRACTICE. A violation of
2 Section 521.051 is a deceptive trade practice actionable under
3 Subchapter E, Chapter 17. (Bus. & Com. Code, Sec. 48.203, as added
4 Acts 79th Leg., R.S., Ch. 294.)

5 CHAPTER 522. IDENTITY THEFT BY ELECTRONIC DEVICE

6 Sec. 522.001. DEFINITIONS

7 Sec. 522.002. OFFENSE; PENALTY

8 CHAPTER 522. IDENTITY THEFT BY ELECTRONIC DEVICE

9 Sec. 522.001. DEFINITIONS. In this chapter:

10 (1) "Payment card" means a credit card, debit card,
11 check card, or other card that is issued to an authorized user to
12 purchase or obtain goods, services, money, or any other thing of
13 value.

14 (2) "Re-encoder" means an electronic device that can
15 be used to transfer encoded information from a magnetic strip on a
16 payment card onto the magnetic strip of a different payment card.

17 (3) "Scanning device" means an electronic device used
18 to access, read, scan, or store information encoded on the magnetic
19 strip of a payment card. (Bus. & Com. Code, Sec. 35.58, Subsec.
20 (a), as added by Acts 78th Leg., R.S., Ch. 649.)

21 Sec. 522.002. OFFENSE; PENALTY. (a) A person commits an
22 offense if the person uses a scanning device or re-encoder to
23 access, read, scan, store, or transfer information encoded on the
24 magnetic strip of a payment card without the consent of an
25 authorized user of the payment card and with intent to harm or
26 defraud another.

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

1 (c) If conduct that constitutes an offense under this
2 section also constitutes an offense under any other law, the actor
3 may be prosecuted under this section or the other law. (Bus. & Com.
4 Code, Sec. 35.58, Subsecs. (b), (c), (d), as added by Acts 78th
5 Leg., R.S., Ch. 649.)

6 CHAPTER 523. PROVISIONS RELATING TO VICTIMS OF IDENTITY THEFT

7 Sec. 523.001. EXTENSION OF CREDIT TO VICTIM OF

8 IDENTITY THEFT

9 Sec. 523.002. VERIFICATION OF CONSUMER IDENTITY

10 Sec. 523.003. NOTATION OF FORGED CHECK

11 CHAPTER 523. PROVISIONS RELATING TO VICTIMS OF IDENTITY THEFT

12 Sec. 523.001. EXTENSION OF CREDIT TO VICTIM OF IDENTITY
13 THEFT. (a) In this section, "victim of identity theft" means an
14 individual who has filed a criminal complaint alleging the
15 commission of an offense under Section 32.51, Penal Code, other
16 than a person who is convicted of an offense under Section 37.08,
17 Penal Code, with respect to that complaint.

18 (b) A person who has been notified that an individual has
19 been the victim of identity theft may not deny the individual an
20 extension of credit, including a loan, in the individual's name or
21 restrict or limit the credit extended solely because the individual
22 has been a victim of identity theft. This subsection does not
23 prohibit a person from denying an individual an extension of credit
24 for a reason other than the individual's having been a victim of
25 identity theft, including by reason of the individual's lack of
26 capacity to contract.

27 (c) A license issued under Subtitle B, Title 4, Finance

1 Code, that is held by a person who violates this section is subject
2 to revocation or suspension under that subtitle. (Bus. & Com. Code,
3 Sec. 35.585.)

4 Sec. 523.002. VERIFICATION OF CONSUMER IDENTITY. (a) In
5 this section:

6 (1) "Consumer report" has the meaning assigned by
7 Section 20.01.

8 (2) "Extension of credit" does not include:

9 (A) an increase in the dollar limit of an
10 existing open-end credit plan as defined by federal Regulation Z
11 (12 C.F.R. Section 226.2), as amended; or

12 (B) any change to, or review of, an existing
13 credit account.

14 (3) "Security alert" has the meaning assigned by
15 Section 20.01.

16 (b) A person who receives notification of a security alert
17 under Section 20.032 in connection with a request for a consumer
18 report for the approval of a credit-based application, including an
19 application for an extension of credit, a purchase, lease, or
20 rental agreement for goods, or for an application for a
21 noncredit-related service, may not lend money, extend credit, or
22 authorize an application without taking reasonable steps to verify
23 the consumer's identity.

24 (c) If a consumer has included with a security alert a
25 specified telephone number to be used for identity verification
26 purposes, a person who receives that number with a security alert
27 must take reasonable steps to contact the consumer using that

1 number before lending money, extending credit, or completing any
2 purchase, lease, or rental of goods, or approving any
3 noncredit-related services.

4 (d) If a person uses a consumer report to facilitate the
5 extension of credit or for any other transaction on behalf of a
6 subsidiary, affiliate, agent, assignee, or prospective assignee,
7 that person, rather than the subsidiary, affiliate, agent,
8 assignee, or prospective assignee, may verify the consumer's
9 identity. (Bus. & Com. Code, Sec. 35.59.)

10 Sec. 523.003. NOTATION OF FORGED CHECK. (a) In this
11 section, "victim of identity theft" means a person who has filed
12 with an appropriate law enforcement agency a criminal complaint
13 alleging commission of an offense under Section 32.51, Penal Code.

14 (b) A financial institution, in accordance with its
15 customary procedures, shall process as forgeries checks received on
16 the account of a victim of identity theft if the victim:

17 (1) closes the account at the financial institution as
18 a result of the identity theft;

19 (2) notifies the financial institution that the
20 identity theft is the reason for closing the account;

21 (3) provides the financial institution with a copy of
22 the criminal complaint described by Subsection (a); and

23 (4) requests that the financial institution return
24 checks with the notation "forgery."

25 (c) A victim of identity theft who requests that a financial
26 institution return checks with the notation "forgery" as provided
27 by Subsection (b):

1 (1) may not assert that the financial institution is
2 liable under Section 4.402 for wrongfully dishonoring a check
3 returned after the victim makes the request; and

4 (2) shall hold the financial institution harmless for
5 acting in accordance with the victim's request. (Bus. & Com. Code,
6 Sec. 35.591.)

7 TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

8 CHAPTER 601. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 601.001. DEFINITIONS

11 Sec. 601.002. APPLICABILITY OF CHAPTER; EXCEPTION

12 [Sections 601.003-601.050 reserved for expansion]

13 SUBCHAPTER B. CONSUMER'S RIGHT TO CANCEL TRANSACTION

14 Sec. 601.051. CONSUMER'S RIGHT TO CANCEL

15 Sec. 601.052. NOTICE OF CONSUMER'S RIGHT TO CANCEL

16 REQUIRED

17 Sec. 601.053. COMPLETED CANCELLATION FORM REQUIRED

18 Sec. 601.054. USE OF FORMS AND NOTICES PRESCRIBED BY

19 THE FEDERAL TRADE COMMISSION

20 AUTHORIZED

21 Sec. 601.055. ALTERNATIVE NOTICE AUTHORIZED FOR

22 CERTAIN CONSUMER TRANSACTIONS

23 [Sections 601.056-601.100 reserved for expansion]

24 SUBCHAPTER C. RIGHTS AND DUTIES OF CONSUMER AND MERCHANT

25 Sec. 601.101. MERCHANT'S COMPENSATION

26 Sec. 601.102. CONSUMER'S RETENTION OF GOODS OR TITLE

27 TO REAL PROPERTY AUTHORIZED

1 Sec. 601.103. CONSUMER'S DUTIES WITH RESPECT TO
2 DELIVERED GOODS OR REAL PROPERTY
3 [Sections 601.104-601.150 reserved for expansion]
4 SUBCHAPTER D. PROHIBITED ACTS AND CONDUCT BY MERCHANT

5 Sec. 601.151. CONFESSION OF JUDGMENT OR WAIVER OF
6 RIGHTS

7 Sec. 601.152. FAILURE TO INFORM OR MISREPRESENTATION
8 OF RIGHT TO CANCEL

9 Sec. 601.153. TRANSFER OF INDEBTEDNESS DURING CERTAIN
10 PERIOD

11 Sec. 601.154. FAILURE TO TAKE CERTAIN ACTIONS
12 FOLLOWING RECEIPT OF NOTICE OF
13 CANCELLATION

14 [Sections 601.155-601.200 reserved for expansion]
15 SUBCHAPTER E. ENFORCEMENT

16 Sec. 601.201. CERTAIN SALES OR CONTRACTS VOID

17 Sec. 601.202. LIABILITY FOR DAMAGES

18 Sec. 601.203. ALTERNATIVE RECOVERY UNDER CERTAIN
19 CIRCUMSTANCES

20 Sec. 601.204. DECEPTIVE TRADE PRACTICE

21 Sec. 601.205. INJUNCTION

22 CHAPTER 601. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 601.001. DEFINITIONS. In this chapter:

25 (1) "Consumer" means an individual who seeks or
26 acquires real property, money or other personal property, services,
27 or credit for personal, family, or household purposes.

1 (2) "Consumer transaction" means a transaction
2 between a merchant and one or more consumers.

3 (3) "Merchant" means a party to a consumer transaction
4 other than a consumer.

5 (4) "Merchant's place of business" means a merchant's
6 main or permanent branch office or local address. For a state or
7 national bank or savings and loan association, the term includes an
8 approved branch office and a registered loan production office.
9 (Bus. & Com. Code, Sec. 39.001.)

10 Sec. 601.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a)
11 This chapter applies only to a consumer transaction in which:

12 (1) the merchant or the merchant's agent engages in a
13 personal solicitation of a sale to the consumer at a place other
14 than the merchant's place of business;

15 (2) the consumer's agreement or offer to purchase is
16 given to the merchant or the merchant's agent at a place other than
17 the merchant's place of business; and

18 (3) the agreement or offer is for:

19 (A) the purchase of goods or services for
20 consideration that exceeds \$25, payable in installments or in cash;
21 or

22 (B) the purchase of real property for
23 consideration that exceeds \$100, payable in installments or in
24 cash.

25 (b) Notwithstanding Subsection (a), this chapter does not
26 apply to:

27 (1) a purchase of farm equipment;

1 (2) an insurance sale regulated by the Texas
2 Department of Insurance;

3 (3) a sale of goods or services made:

4 (A) under a preexisting revolving charge account
5 or retail charge agreement; or

6 (B) after negotiations between the parties at a
7 business establishment in a fixed location where goods or services
8 are offered or exhibited for sale; or

9 (4) a sale of real property if:

10 (A) the purchaser is represented by a licensed
11 attorney;

12 (B) the transaction is negotiated by a licensed
13 real estate broker; or

14 (C) the transaction is negotiated at a place
15 other than the consumer's residence by the person who owns the
16 property. (Bus. & Com. Code, Sec. 39.002.)

17 [Sections 601.003-601.050 reserved for expansion]

18 SUBCHAPTER B. CONSUMER'S RIGHT TO CANCEL TRANSACTION

19 Sec. 601.051. CONSUMER'S RIGHT TO CANCEL. In addition to
20 any other rights or remedies available, a consumer may cancel a
21 consumer transaction not later than midnight of the third business
22 day after the date the consumer signs an agreement or offer to
23 purchase. (Bus. & Com. Code, Sec. 39.003.)

24 Sec. 601.052. NOTICE OF CONSUMER'S RIGHT TO CANCEL
25 REQUIRED. (a) A merchant must provide a consumer with a complete
26 receipt or copy of a contract pertaining to the consumer
27 transaction at the time of its execution.

1 (b) The document provided under Subsection (a) must:

2 (1) be in the same language as that principally used in
3 the oral sales presentation;

4 (2) contain the date of the transaction;

5 (3) contain the name and address of the merchant; and

6 (4) contain a statement:

7 (A) in immediate proximity to the space reserved
8 in the contract for the signature of the consumer or on the front
9 page of the receipt if a contract is not used; and

10 (B) in boldfaced type of a minimum size of 10
11 points in substantially the following form:

12 "YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME
13 PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS
14 TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN
15 EXPLANATION OF THIS RIGHT." (Bus. & Com. Code, Secs. 39.004(a),
16 (b).)

17 Sec. 601.053. COMPLETED CANCELLATION FORM REQUIRED. (a) A
18 merchant that provides a document under Section 601.052 must attach
19 to the document a completed notice of cancellation form in
20 duplicate. The form must:

21 (1) be easily detachable;

22 (2) be in the same language as the document provided
23 under Section 601.052; and

24 (3) contain the following information and statements
25 in 10-point boldfaced type:

26 "NOTICE OF CANCELLATION

27 (enter date of transaction)

1 "YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR
2 OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

3 "IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY
4 YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT
5 EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING
6 RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY
7 SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

8 "IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT
9 YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN
10 RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE;
11 OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT
12 REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S
13 EXPENSE AND RISK.

14 "IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF
15 THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR
16 NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS
17 WITHOUT ANY FURTHER OBLIGATION.

18 "TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND
19 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE,
20 OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's
21 place of business) NOT LATER THAN MIDNIGHT OF (date).

22 I HEREBY CANCEL THIS TRANSACTION.

23 (date)

24 (buyer's signature)"

25 (b) A merchant may not fail to include on both copies of the
26 form described by Subsection (a):

27 (1) the name of the merchant;

- 1 (2) the address of the merchant's place of business;
2 (3) the date of the transaction; and
3 (4) a date not earlier than the third business day
4 after the date of the transaction by which the consumer must give
5 notice of cancellation. (Bus. & Com. Code, Secs. 39.004(c),
6 39.008(a) (part).)

7 Sec. 601.054. USE OF FORMS AND NOTICES PRESCRIBED BY THE
8 FEDERAL TRADE COMMISSION AUTHORIZED. The use of the forms and
9 notices of the right to cancel prescribed by the Federal Trade
10 Commission's trade-regulation rule providing a cooling-off period
11 for door-to-door sales constitutes compliance with Sections
12 601.052 and 601.053. (Bus. & Com. Code, Sec. 39.004(d).)

13 Sec. 601.055. ALTERNATIVE NOTICE AUTHORIZED FOR CERTAIN
14 CONSUMER TRANSACTIONS. A consumer transaction in which the
15 contract price does not exceed \$200 complies with the notice
16 requirements of Sections 601.052 and 601.053 if:

17 (1) the consumer may at any time cancel the order,
18 refuse to accept delivery of the goods without incurring any
19 obligation to pay for the goods, or return the goods to the merchant
20 and receive a full refund of the amount the consumer has paid; and

21 (2) the consumer's right to cancel the order, refuse
22 delivery, or return the goods without obligation or charge at any
23 time is clearly and conspicuously stated on the face or reverse side
24 of the sales ticket. (Bus. & Com. Code, Sec. 39.004(e).)

25 [Sections 601.056-601.100 reserved for expansion]

26 SUBCHAPTER C. RIGHTS AND DUTIES OF CONSUMER AND MERCHANT

27 Sec. 601.101. MERCHANT'S COMPENSATION. A merchant is not

1 entitled to compensation for services performed under a consumer
2 transaction canceled under this chapter. (Bus. & Com. Code, Sec.
3 39.005.)

4 Sec. 601.102. CONSUMER'S RETENTION OF GOODS OR TITLE TO
5 REAL PROPERTY AUTHORIZED. Until a merchant has complied with this
6 chapter, a consumer with possession of goods or the right or title
7 to real property delivered by the merchant:

8 (1) may retain possession of the goods or the right or
9 title to the real property; and

10 (2) has a lien on the goods or real property to the
11 extent of any recovery to which the consumer is entitled. (Bus. &
12 Com. Code, Sec. 39.006.)

13 Sec. 601.103. CONSUMER'S DUTIES WITH RESPECT TO DELIVERED
14 GOODS OR REAL PROPERTY. (a) Within a reasonable time after a
15 cancellation under this chapter, the consumer must, on demand,
16 tender to the merchant any goods or any right or title to real
17 property delivered by the merchant under the consumer transaction.

18 (b) The consumer is not obligated to tender goods at a place
19 other than the consumer's residence.

20 (c) If the merchant fails to demand possession of the goods
21 or the right or title to real property within a reasonable time
22 after cancellation, the goods or real property become the property
23 of the consumer without obligation to pay.

24 (d) Goods or real property in possession of the consumer are
25 at the risk of the merchant, except that the consumer shall take
26 reasonable care of the goods or the real property both before and
27 for a reasonable time after cancellation.

1 (e) For purposes of this section, 20 days is presumed to be a
2 reasonable time. (Bus. & Com. Code, Sec. 39.007.)

3 [Sections 601.104-601.150 reserved for expansion]

4 SUBCHAPTER D. PROHIBITED ACTS AND CONDUCT BY MERCHANT

5 Sec. 601.151. CONFESSION OF JUDGMENT OR WAIVER OF RIGHTS. A
6 merchant may not include in a contract or receipt pertaining to a
7 consumer transaction a confession of judgment or a waiver of any of
8 the rights to which the consumer is entitled under this chapter.
9 (Bus. & Com. Code, Sec. 39.008(a) (part).)

10 Sec. 601.152. FAILURE TO INFORM OR MISREPRESENTATION OF
11 RIGHT TO CANCEL. A merchant may not:

12 (1) at the time the consumer signs the contract
13 pertaining to a consumer transaction or purchases the goods,
14 services, or real property, fail to inform the consumer orally of
15 the right to cancel the transaction; or

16 (2) misrepresent in any manner the consumer's right to
17 cancel. (Bus. & Com. Code, Sec. 39.008(a) (part).)

18 Sec. 601.153. TRANSFER OF INDEBTEDNESS DURING CERTAIN
19 PERIOD. A merchant may not negotiate, transfer, sell, or assign a
20 note or other evidence of indebtedness to a finance company or other
21 third party before midnight of the fifth business day after the date
22 the contract pertaining to a consumer transaction was signed or the
23 goods or services were purchased. (Bus. & Com. Code, Sec. 39.008(a)
24 (part).)

25 Sec. 601.154. FAILURE TO TAKE CERTAIN ACTIONS FOLLOWING
26 RECEIPT OF NOTICE OF CANCELLATION. A merchant may not:

27 (1) fail to notify the consumer before the end of the

1 10th business day after the date the merchant receives the notice of
2 cancellation whether the merchant intends to repossess or abandon
3 any shipped or delivered goods;

4 (2) fail or refuse to honor a valid cancellation under
5 this chapter by a consumer; or

6 (3) fail before the end of the 10th business day after
7 the date the merchant receives a valid notice of cancellation to:

8 (A) refund all payments made under the contract
9 or sale;

10 (B) return any goods or property traded in to the
11 merchant in substantially the same condition as when received by
12 the merchant;

13 (C) cancel and return a negotiable instrument
14 executed by the consumer in connection with the contract of sale;

15 (D) take any action appropriate to terminate
16 promptly any security interest created in the transaction; or

17 (E) restore improvements on real property to the
18 same condition as when the merchant took title to or possession of
19 the real property unless the consumer requests otherwise. (Bus. &
20 Com. Code, Sec. 39.008(a) (part).)

21 [Sections 601.155-601.200 reserved for expansion]

22 SUBCHAPTER E. ENFORCEMENT

23 Sec. 601.201. CERTAIN SALES OR CONTRACTS VOID. A sale or
24 contract entered into under a consumer transaction in violation of
25 Section 601.053(b) or Subchapter D is void. (Bus. & Com. Code, Sec.
26 39.008(b).)

27 Sec. 601.202. LIABILITY FOR DAMAGES. A merchant who

1 violates this chapter is liable to the consumer for:

2 (1) actual damages suffered by the consumer as a
3 result of the violation;

4 (2) reasonable attorney's fees; and

5 (3) court costs. (Bus. & Com. Code, Sec. 39.008(c).)

6 Sec. 601.203. ALTERNATIVE RECOVERY UNDER CERTAIN
7 CIRCUMSTANCES. If the merchant fails to tender goods or property
8 traded to the merchant in substantially the same condition as when
9 received by the merchant, the consumer may elect to recover an
10 amount equal to the trade-in allowance stated in the agreement.
11 (Bus. & Com. Code, Sec. 39.008(d).)

12 Sec. 601.204. DECEPTIVE TRADE PRACTICE. A violation of
13 this chapter is a false, misleading, or deceptive act or practice as
14 defined by Section 17.46(b). In addition to any remedy under this
15 chapter, a remedy under Subchapter E, Chapter 17, is also available
16 for a violation of this chapter. (Bus. & Com. Code, Sec.
17 39.008(e).)

18 Sec. 601.205. INJUNCTION. If the attorney general believes
19 that a person is violating or about to violate this chapter, the
20 attorney general may bring an action in the name of the state to
21 restrain or enjoin the person from violating this chapter. (Bus. &
22 Com. Code, Sec. 39.009.)

23 CHAPTER 602. DELIVERY OF UNSOLICITED GOODS

24 Sec. 602.001. INAPPLICABILITY OF CHAPTER TO
25 SUBSTITUTED GOODS

26 Sec. 602.002. ACTIONS AUTHORIZED ON DELIVERY OF
27 UNSOLICITED GOODS

1 Sec. 602.003. CERTAIN UNSOLICITED GOODS CONSIDERED

2 GIFT

3 Sec. 602.004. MISTAKEN DELIVERY

4 CHAPTER 602. DELIVERY OF UNSOLICITED GOODS

5 Sec. 602.001. INAPPLICABILITY OF CHAPTER TO SUBSTITUTED
6 GOODS. This chapter does not apply to goods substituted for goods
7 ordered or solicited by the recipient of the goods. (Bus. & Com.
8 Code, Sec. 35.45(d).)

9 Sec. 602.002. ACTIONS AUTHORIZED ON DELIVERY OF UNSOLICITED
10 GOODS. Unless otherwise agreed, a person to whom unsolicited goods
11 are delivered:

12 (1) is entitled to refuse to accept delivery of the
13 goods; and

14 (2) is not required to return the goods to the sender.
15 (Bus. & Com. Code, Sec. 35.45(a).)

16 Sec. 602.003. CERTAIN UNSOLICITED GOODS CONSIDERED GIFT.

17 (a) Unsolicited goods that are addressed to or intended for the
18 recipient are considered a gift to the recipient.

19 (b) The recipient may use or dispose of goods described by
20 Subsection (a) in any manner without obligation to the sender.
21 (Bus. & Com. Code, Sec. 35.45(b).)

22 Sec. 602.004. MISTAKEN DELIVERY. A person who receives
23 unsolicited goods as the result of a bona fide mistake shall return
24 the goods. The sender has the burden of proof as to the mistake.
25 (Bus. & Com. Code, Sec. 35.45(c).)

1 CHAPTER 603. REGULATION OF CONSUMER CONTRACTS CREATED BY

2 ACCEPTANCE OF CHECK OR OTHER DRAFT

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 603.001. DEFINITIONS

5 Sec. 603.002. APPLICABILITY OF CHAPTER

6 [Sections 603.003-603.050 reserved for expansion]

7 SUBCHAPTER B. REQUIRED DISCLOSURES AND NOTICES

8 Sec. 603.051. REQUIRED DISCLOSURE ON CHECK OR OTHER

9 DRAFT

10 Sec. 603.052. REQUIRED NOTICE OF RIGHT TO TERMINATE

11 ACCEPTANCE OF OFFER

12 Sec. 603.053. EFFECT OF NONCOMPLIANCE

13 [Sections 603.054-603.100 reserved for expansion]

14 SUBCHAPTER C. ENFORCEMENT

15 Sec. 603.101. DECEPTIVE TRADE PRACTICE

16 CHAPTER 603. REGULATION OF CONSUMER CONTRACTS CREATED BY

17 ACCEPTANCE OF CHECK OR OTHER DRAFT

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 603.001. DEFINITIONS. Unless the context requires a
20 different definition, the definitions provided by Chapter 3 apply
21 to this chapter. (Bus. & Com. Code, Sec. 35.455(a).)

22 Sec. 603.002. APPLICABILITY OF CHAPTER. (a) Except as
23 provided by Subsection (b), this chapter applies only to a person
24 who solicits business in this state by mailing an individual a check
25 or other draft payable to that individual.

26 (b) This chapter does not apply to a financial institution
27 as defined by Section 201.101, Finance Code, or an authorized

1 lender as defined by Section 341.001 of that code, that sends a
2 check or other draft to an existing or prospective account holder
3 authorizing that person to access an extension of credit. (Bus. &
4 Com. Code, Sec. 35.455(b).)

5 [Sections 603.003-603.050 reserved for expansion]

6 SUBCHAPTER B. REQUIRED DISCLOSURES AND NOTICES

7 Sec. 603.051. REQUIRED DISCLOSURE ON CHECK OR OTHER DRAFT.

8 (a) A person who makes an offer that the recipient may accept by
9 endorsing and negotiating a check or other draft shall disclose on
10 the check or other draft that by signing and negotiating the
11 instrument, the depositor agrees to pay for future goods or
12 services as a result of the contract.

13 (b) The disclosure required by Subsection (a) must be clear,
14 conspicuous, and located on the check or other draft next to the
15 place for endorsement. (Bus. & Com. Code, Sec. 35.455(c).)

16 Sec. 603.052. REQUIRED NOTICE OF RIGHT TO TERMINATE
17 ACCEPTANCE OF OFFER. (a) If an offer described by Section 603.051
18 includes a free membership period, trial period, or other incentive
19 with a time limit, and if the offer results in a contract unless the
20 recipient terminates the acceptance of the offer not later than the
21 end of the time period, the offeror shall send notice to the
22 recipient, at least two weeks before debiting any account, of the
23 recipient's obligation to terminate the recipient's acceptance of
24 the offer.

25 (b) The notice required by Subsection (a) must be clear and
26 conspicuous. If the offeror bills the recipient by mailing an
27 invoice, the notice may be included with the invoice. (Bus. & Com.

1 Code, Sec. 35.455(d).)

2 Sec. 603.053. EFFECT OF NONCOMPLIANCE. (a) An offer
3 described by Section 603.051 is void if the offeror:

4 (1) does not make the disclosure required by that
5 section;

6 (2) does not send notice as required by Section
7 603.052, if applicable; or

8 (3) provides an incentive with a time limit, including
9 a free membership period or trial period, that is less than two
10 weeks in length.

11 (b) A delivery of goods or services to the recipient does
12 not operate to form a contract between the offeror and the recipient
13 if:

14 (1) the offer does not contain the disclosure required
15 by Section 603.051;

16 (2) the offer is not followed by a notice required by
17 Section 603.052, if applicable; or

18 (3) the offeror fails to honor the recipient's
19 cancellation or termination of the acceptance of the offer made
20 under the terms of the offer or as required by Section 603.052.
21 (Bus. & Com. Code, Secs. 35.455(e), (f).)

22 [Sections 603.054-603.100 reserved for expansion]

23 SUBCHAPTER C. ENFORCEMENT

24 Sec. 603.101. DECEPTIVE TRADE PRACTICE. A violation of
25 this chapter is a deceptive trade practice in addition to the
26 practices described by Subchapter E, Chapter 17, and is actionable
27 under that subchapter. (Bus. & Com. Code, Sec. 35.455(g).)

1 CHAPTER 604. SALE OR ISSUANCE OF STORED VALUE CARD

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 604.001. DEFINITION OF STORED VALUE CARD

4 Sec. 604.002. INAPPLICABILITY OF CHAPTER

5 Sec. 604.003. CAUSE OF ACTION NOT CREATED

6 [Sections 604.004-604.050 reserved for expansion]

7 SUBCHAPTER B. PERMISSIBLE FEES

8 Sec. 604.051. FEES AND CHARGES RELATED TO ISSUANCE AND

9 HANDLING OF CARD

10 Sec. 604.052. FEES OR CHARGES THAT DECREASE UNREDEEMED

11 BALANCE OF CARD

12 [Sections 604.053-604.100 reserved for expansion]

13 SUBCHAPTER C. REQUIRED DISCLOSURES

14 Sec. 604.101. REQUIRED DISCLOSURE OF CERTAIN MATTERS

15 APPLICABLE TO CARD

16 Sec. 604.102. REQUIRED PRINTING OF CERTAIN DISCLOSURES

17 Sec. 604.103. VALIDITY OF CARD SOLD WITHOUT REQUIRED

18 DISCLOSURES

19 CHAPTER 604. SALE OR ISSUANCE OF STORED VALUE CARD

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 604.001. DEFINITION OF STORED VALUE CARD. In this
22 chapter, "stored value card":

23 (1) means a record, as defined by Section 322.002,
24 including a record that contains a microprocessor chip, magnetic
25 strip, or other means of storing information:

26 (A) that evidences a promise made for monetary
27 consideration by the seller or issuer of the record that goods or

1 services will be provided to the owner of the record in the value
2 shown in the record;

3 (B) that is prefunded; and

4 (C) the value of which is reduced on redemption;

5 and

6 (2) includes a gift card or gift certificate. (Bus. &
7 Com. Code, Secs. 35.42(a)(1), (2).)

8 Sec. 604.002. INAPPLICABILITY OF CHAPTER. This chapter
9 does not apply to a stored value card that:

10 (1) is issued by:

11 (A) a financial institution acting as a financial
12 agent of the United States or this state;

13 (B) a federally insured financial institution,
14 as defined by Section 201.101, Finance Code, if the financial
15 institution is primarily liable for the card as the issuing
16 principal; or

17 (C) an air carrier holding a certificate of
18 public convenience and necessity under Title 49, United States
19 Code;

20 (2) is issued as a prepaid calling card by a prepaid
21 calling card company regulated under Section 55.253, Utilities
22 Code;

23 (3) is distributed by the issuer to a person under an
24 awards, rewards, loyalty, incentive, rebate, or promotional
25 program and is not issued or reloaded in exchange for money tendered
26 by the cardholder;

27 (4) is sold below face value or donated to:

- 1 (A) an employee of the seller or issuer;
2 (B) a nonprofit or charitable organization; or
3 (C) an educational institution for fund-raising
4 purposes; or

5 (5) does not expire and for which the seller does not
6 charge a fee other than a fee described in Section 604.051. (Bus. &
7 Com. Code, Secs. 35.42(b), (c).)

8 Sec. 604.003. CAUSE OF ACTION NOT CREATED. This chapter
9 does not create a cause of action against a person who issues or
10 sells a stored value card. (Bus. & Com. Code, Sec. 35.42(g).)

11 [Sections 604.004-604.050 reserved for expansion]

12 SUBCHAPTER B. PERMISSIBLE FEES

13 Sec. 604.051. FEES AND CHARGES RELATED TO ISSUANCE AND
14 HANDLING OF CARD. If disclosed as required by Subchapter C, the
15 issuer of a stored value card may impose and collect a reasonable:

16 (1) handling fee in connection with the issuance of or
17 adding of value to the card;

18 (2) access fee for a card transaction conducted at an
19 unmanned teller machine, as defined by Section 59.301, Finance
20 Code; and

21 (3) reissue or replacement charge if an expired or
22 lost card is reissued or replaced. (Bus. & Com. Code, Sec.
23 35.42(d).)

24 Sec. 604.052. FEES OR CHARGES THAT DECREASE UNREDEEMED
25 BALANCE OF CARD. The issuer of a stored value card may impose or
26 collect a periodic fee or other charge that causes the unredeemed
27 balance of the card to decrease over time only if the fee:

- 1 (1) is reasonable;
- 2 (2) is not assessed until after the first anniversary
- 3 of the date the card is sold or issued; and
- 4 (3) is disclosed as required by Subchapter C. (Bus. &
- 5 Com. Code, Sec. 35.42(e).)

6 [Sections 604.053-604.100 reserved for expansion]

7 SUBCHAPTER C. REQUIRED DISCLOSURES

8 Sec. 604.101. REQUIRED DISCLOSURE OF CERTAIN MATTERS

9 APPLICABLE TO CARD. An expiration date or policy, fee, or other

10 material restriction or contract term applicable to a stored value

11 card must be clearly and conspicuously disclosed at the time the

12 card is sold or issued to a person to enable the person to make an

13 informed decision before purchasing the card. (Bus. & Com. Code,

14 Sec. 35.42(f) (part).)

15 Sec. 604.102. REQUIRED PRINTING OF CERTAIN DISCLOSURES. In

16 addition to the disclosure required under Section 604.101, a

17 disclosure regarding the expiration of a stored value card or a

18 periodic fee that reduces the unredeemed value of a stored value

19 card must be legibly printed on the card. (Bus. & Com. Code, Sec.

20 35.42(f) (part).)

21 Sec. 604.103. VALIDITY OF CARD SOLD WITHOUT REQUIRED

22 DISCLOSURES. A stored value card sold without the disclosure

23 required by this subchapter of an expiration date or policy, fee, or

24 other material restriction or contract term applicable to the card

25 is valid until redeemed or replaced. (Bus. & Com. Code, Sec.

26 35.42(f) (part).)

1 TITLE 13. CONTESTS AND OTHER PROMOTIONS
2 CHAPTER 621. CONTESTS AND GIFT GIVEAWAYS
3 SUBCHAPTER A. GENERAL PROVISIONS
4 Sec. 621.001. SHORT TITLE
5 Sec. 621.002. CONSTRUCTION OF CHAPTER
6 Sec. 621.003. DEFINITIONS
7 Sec. 621.004. INAPPLICABILITY OF CHAPTER TO CERTAIN
8 SALES PRESENTATIONS
9 Sec. 621.005. DETERMINATION OF RETAIL VALUE OF PRIZE
10 OR GIFT
11 Sec. 621.006. DEPOSIT REQUIREMENTS
12 [Sections 621.007-621.050 reserved for expansion]
13 SUBCHAPTER B. GIFT OFFERS
14 Sec. 621.051. APPLICABILITY OF SUBCHAPTER
15 Sec. 621.052. REQUIRED DISCLOSURES RELATING TO GIFTS
16 Sec. 621.053. PROHIBITED ACTS RELATING TO GIFTS
17 Sec. 621.054. LIMITATIONS ON CONDITIONING GIFT ON
18 PAYMENT OF CONSIDERATION, CHARGE, OR
19 EXPENSE
20 Sec. 621.055. LIMITATIONS ON CONDITIONING GIFT ON
21 PURCHASE
22 [Sections 621.056-621.100 reserved for expansion]
23 SUBCHAPTER C. MATCHED CONTESTS AND DRAWINGS
24 Sec. 621.101. APPLICABILITY OF SUBCHAPTER
25 Sec. 621.102. REQUIRED DISCLOSURES RELATING TO PRIZES
26 GENERALLY
27 Sec. 621.103. REQUIREMENTS FOR MATCHED CONTEST

- 1 Sec. 621.104. REQUIRED DISCLOSURES RELATING TO MATCHED
2 CONTEST
- 3 Sec. 621.105. PROHIBITED ACTS RELATING TO MATCHED
4 CONTEST
- 5 Sec. 621.106. REQUIRED DISCLOSURES RELATING TO
6 DRAWINGS
- 7 Sec. 621.107. PROHIBITED ACTS RELATING TO DRAWINGS
- 8 Sec. 621.108. CONDITIONING PRIZE ON PAYMENT OF
9 CONSIDERATION, CHARGE, OR EXPENSE
10 PROHIBITED; EXCEPTIONS
- 11 Sec. 621.109. CONDITIONING PRIZE ON PURCHASE
12 PROHIBITED
- 13 [Sections 621.110-621.150 reserved for expansion]
- 14 SUBCHAPTER D. FULFILLMENT OF GIFT AND PRIZE OFFERS
- 15 Sec. 621.151. AVAILABILITY AND AWARDING OF GIFT OR
16 PRIZE
- 17 Sec. 621.152. RAINCHECK REQUIREMENTS
- 18 Sec. 621.153. ISSUANCE OF CHECK OR MONEY ORDER IN LIEU
19 OF GIFT OR MINOR PRIZE
- 20 Sec. 621.154. CERTIFICATE PERMITTED FOR LODGING,
21 AIRFARE, TRIP, OR RECREATIONAL
22 ACTIVITY
- 23 [Sections 621.155-621.200 reserved for expansion]
- 24 SUBCHAPTER E. CONTEST RECORDS
- 25 Sec. 621.201. APPLICABILITY OF SUBCHAPTER
- 26 Sec. 621.202. REQUIRED RECORDS FOR CONTESTS OTHER THAN
27 DRAWINGS

1 Sec. 621.203. REQUIRED RECORDS FOR DRAWINGS

2 Sec. 621.204. DISCLOSURE OF MAJOR PRIZES AND WINNERS
3 ON REQUEST

4 Sec. 621.205. RECORDS AVAILABLE TO ATTORNEY GENERAL

5 [Sections 621.206-621.250 reserved for expansion]

6 SUBCHAPTER F. ENFORCEMENT

7 Sec. 621.251. CRIMINAL PENALTY

8 Sec. 621.252. DECEPTIVE TRADE PRACTICE

9 CHAPTER 621. CONTESTS AND GIFT GIVEAWAYS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 621.001. SHORT TITLE. This chapter may be cited as the
12 Contest and Gift Giveaway Act. (Bus. & Com. Code, Sec. 40.001.)

13 Sec. 621.002. CONSTRUCTION OF CHAPTER. This chapter shall
14 be interpreted to provide the maximum disclosure to, and fair
15 treatment of, a person who enters a contest or gift giveaway through
16 which the person is solicited to attend a sales presentation. (Bus.
17 & Com. Code, Sec. 40.002.)

18 Sec. 621.003. DEFINITIONS. (a) In this chapter:

19 (1) "Contest" means a promotional device in which:

20 (A) a person is offered, as an inducement to
21 attend a sales presentation, a chance to win or receive a prize by
22 complying with specified entry requirements;

23 (B) the winner or recipient of a prize is
24 determined by random selection; and

25 (C) all offered prizes are awarded.

26 (2) "Contest period" means the duration of a contest
27 from the beginning date to the ending date.

1 (3) "Drawing" means a contest in which the recipient
2 of a prize is determined from all of the entries received.

3 (4) "Entry form" means a card, letter, entry blank,
4 token, or similar device that identifies a contestant by:

5 (A) name;

6 (B) number, letter, or symbol; or

7 (C) both name and number, letter, or symbol.

8 (5) "Gift" means an item of value that is offered,
9 transferred, or given to a person as an inducement to attend a sales
10 presentation but that is not offered, transferred, or awarded
11 through a contest. The term does not include a manufacturer's
12 rebate or discount available to the public.

13 (6) "Major prize" means a prize that has an actual unit
14 cost to the offeror of at least \$250.

15 (7) "Matched contest" means a contest in which:

16 (A) the winning numbers are preselected, printed
17 on an entry form, and distributed to the public; and

18 (B) the numbers printed on the entry forms are
19 subsequently matched with the list of winning numbers at a sales
20 location to determine prize eligibility.

21 (8) "Minor prize" means a prize that:

22 (A) has an actual unit cost to the offeror of less
23 than \$250; and

24 (B) is transferred to a person who:

25 (i) attends a sales presentation; and

26 (ii) is not the winner of a major prize.

27 (9) "Odds of winning" means a ratio in which:

1 (A) the numerator equals the actual number of
2 units of an identified prize to be given away during a contest
3 period; and

4 (B) the denominator equals the number of entry
5 forms distributed or reasonably anticipated to be distributed
6 during the contest period.

7 (10) "Offeror" means a person who solicits another
8 person to attend a sales presentation.

9 (11) "Person" includes an individual, a corporation, a
10 firm, and an association.

11 (12) "Prize" means an item of value that is offered,
12 awarded, or given to a person through a contest. The term does not
13 include a manufacturer's rebate or discount available to the
14 public.

15 (13) "Sales presentation" means a transaction or
16 occurrence in which a consumer is solicited to execute a contract
17 that obligates the consumer to purchase goods or services as
18 defined by Subchapter E, Chapter 17, including:

19 (A) a timeshare interest as defined by Section
20 221.002, Property Code; and

21 (B) a membership interest as defined by Section
22 222.003, Property Code.

23 (14) "Winning number" includes a letter or other
24 identifying symbol.

25 (b) For purposes of Subsection (a)(1)(B), a determination
26 made by random selection does not include the method used by an
27 offeror to identify a person who will be notified of an offer to win

1 a prize. (Bus. & Com. Code, Secs. 40.003, 40.035(b).)

2 Sec. 621.004. INAPPLICABILITY OF CHAPTER TO CERTAIN SALES
3 PRESENTATIONS. This chapter does not apply to a sales presentation
4 that is conducted in conjunction with a business seminar, trade
5 show, convention, or other gathering if only representatives of
6 business entities who attend the seminar, trade show, convention,
7 or gathering are solicited to attend. (Bus. & Com. Code, Sec.
8 40.004.)

9 Sec. 621.005. DETERMINATION OF RETAIL VALUE OF PRIZE OR
10 GIFT. (a) The retail value of an item offered as a prize or gift is
11 the price at which at least two principal retail outlets in this
12 state have made a substantial number of sales of an identical item
13 to members of the public during the six months preceding the
14 offering of the prize or gift. The item sold by the principal
15 retail outlets must be from the same manufacturer, and be of the
16 same brand, model, and type, as the item offered as a prize or gift.

17 (b) If a substantial number of sales of a particular item
18 offered as a prize or gift have not been made in this state during
19 the six months preceding the offering of the item described in the
20 solicitation or if the offeror elects, the retail value of the item
21 is the actual cost of the item to the offeror, net of any rebates,
22 plus 200 percent.

23 (c) If a prize or gift involves lodging, airfare, a trip, or
24 a recreational activity, the retail value is the retail sales price
25 of that lodging, airfare, trip, or recreational activity to a
26 member of the public who is not involved in a promotional or other
27 discount transaction. (Bus. & Com. Code, Sec. 40.005.)

1 Sec. 621.006. DEPOSIT REQUIREMENTS. (a) In this section,
2 "refundable deposit" means a deposit that is required to be
3 returned in its entirety to a consumer if:

4 (1) it is paid by the consumer for a reservation used
5 by the consumer; or

6 (2) the consumer provides at least five possible
7 reservation dates, none of which can be confirmed.

8 (b) An offeror may require a refundable deposit for a gift
9 or prize involving lodging, airfare, a trip, or a recreational
10 activity if the deposit requirement is fully, clearly, and
11 conspicuously disclosed.

12 (c) A condition that restricts the refund of the deposit
13 must be clearly and conspicuously disclosed in at least 10-point
14 type on the solicitation. (Bus. & Com. Code, Secs. 40.006(g)
15 (part), 40.007.)

16 [Sections 621.007-621.050 reserved for expansion]

17 SUBCHAPTER B. GIFT OFFERS

18 Sec. 621.051. APPLICABILITY OF SUBCHAPTER. This subchapter
19 applies to a person who uses a gift as part of an advertising plan or
20 program. (Bus. & Com. Code, Sec. 40.031.)

21 Sec. 621.052. REQUIRED DISCLOSURES RELATING TO GIFTS. (a)
22 An offeror who notifies a person that the person will receive a gift
23 shall, at the time of the notification, clearly and conspicuously
24 disclose:

25 (1) that attendance at a sales presentation is
26 required;

27 (2) the approximate duration of the sales

1 presentation; and

2 (3) a description of the product or service being
3 sold.

4 (b) A person shall disclose:

5 (1) the retail value of a gift; and

6 (2) clearly and conspicuously in at least 10-point
7 type that airfare, lodging, or both are not included as part of a
8 gift that is a trip or recreational activity to the extent that
9 either or both are not included. (Bus. & Com. Code, Secs.
10 40.035(a), 40.036 (part).)

11 Sec. 621.053. PROHIBITED ACTS RELATING TO GIFTS. A person
12 may not:

13 (1) use the term "gift" or a similar term in a false,
14 misleading, or deceptive manner;

15 (2) directly represent or imply that a gift promotion
16 is a contest;

17 (3) in a gift promotion, use the term:

18 (A) "finalist," "major award winner," "grand
19 prize recipient," "winner," "won," "will win," or "will be awarded"
20 or use words or phrases of similar meaning that imply that a person
21 is being solicited to enter or participate in a contest; or

22 (B) "sweepstakes" or "contest" or use words or
23 phrases of similar meaning that imply that a person is being
24 solicited to enter or has won a contest;

25 (4) represent that a gift has a sponsor, approval,
26 characteristic, ingredient, use, benefit, quantity, status,
27 affiliation, connection, or identity that the gift does not have;

1 (5) represent that a gift is of a particular standard,
2 quality, grade, style, or model if the gift is of another; or

3 (6) use a word or phrase that:

4 (A) simulates or causes confusion with a document
5 issued by an officer of a court or with the seal or name of a real or
6 fictitious governmental entity; or

7 (B) implies that the offeror is sending a court
8 document or legal document or that the offeror is a governmental
9 entity. (Bus. & Com. Code, Sec. 40.036 (part).)

10 Sec. 621.054. LIMITATIONS ON CONDITIONING GIFT ON PAYMENT
11 OF CONSIDERATION, CHARGE, OR EXPENSE. (a) In this section,
12 "redemption or shipping fee" means any kind of consideration paid
13 to the offeror. The term does not include a refundable deposit.

14 (b) Except as provided by Subsection (c), an offeror may
15 notify a person that the person will receive a gift, the receipt of
16 which is conditioned on the person paying consideration of any
17 kind, paying a charge, or incurring an expense, only if the offeror
18 fully, clearly, and conspicuously discloses the consideration,
19 charge, or expense.

20 (c) An offeror may not charge a redemption or shipping fee
21 for a gift regardless of whether full disclosure of the fee is made.

22 (d) A gift is not prohibited in a legitimate trade promotion
23 if the advertising regarding the promotion fully discloses any
24 contractual obligation to be assumed to qualify for the gift. (Bus.
25 & Com. Code, Secs. 40.032 (part), 40.033.)

26 Sec. 621.055. LIMITATIONS ON CONDITIONING GIFT ON PURCHASE.

27 (a) An offeror may notify a person that the person will receive a

1 gift, the receipt of which is conditioned on the person purchasing a
2 good or service, only if at the time of notification the offeror
3 clearly and conspicuously discloses that purchase of a good or
4 service is required.

5 (b) A gift is not prohibited in a legitimate trade promotion
6 if the advertising regarding the promotion fully discloses any
7 requirement of a purchase to be made to qualify for the gift. (Bus.
8 & Com. Code, Secs. 40.032 (part), 40.034.)

9 [Sections 621.056-621.100 reserved for expansion]

10 SUBCHAPTER C. MATCHED CONTESTS AND DRAWINGS

11 Sec. 621.101. APPLICABILITY OF SUBCHAPTER. This subchapter
12 applies to a person who uses a contest as part of an advertising
13 plan or program. (Bus. & Com. Code, Sec. 40.061.)

14 Sec. 621.102. REQUIRED DISCLOSURES RELATING TO PRIZES
15 GENERALLY. An offeror who notifies a person that the person has won
16 a prize, will receive a prize, or has a chance to win or receive a
17 prize shall, at the time of the notification, clearly and
18 conspicuously disclose:

19 (1) that attendance at a sales presentation is
20 required;

21 (2) the approximate duration of the sales
22 presentation; and

23 (3) a description of the product or service being
24 sold. (Bus. & Com. Code, Sec. 40.064.)

25 Sec. 621.103. REQUIREMENTS FOR MATCHED CONTEST. (a) The
26 identity and number of the major prizes to be awarded in a matched
27 contest must be:

1 (1) determined before the contest begins; and

2 (2) disclosed on each entry form distributed.

3 (b) Each major prize identified on an entry form for a
4 matched contest shall be awarded.

5 (c) The contest period for a matched contest may not exceed
6 12 calendar months.

7 (d) If, during the contest period for a matched contest, a
8 winning number is not presented or matched for a major prize, the
9 offeror shall conduct a drawing from the names of those individuals
10 who attended a sales presentation during the contest period. The
11 offeror shall conduct the drawing not later than the 60th day after
12 the date the contest period ends. Each major prize identified on
13 the entry forms distributed during the contest period that was not
14 previously awarded shall be awarded at the time of the drawing.
15 (Bus. & Com. Code, Sec. 40.065.)

16 Sec. 621.104. REQUIRED DISCLOSURES RELATING TO MATCHED
17 CONTEST. (a) A person who uses a matched contest shall clearly and
18 conspicuously disclose in writing in the offer:

19 (1) that attendance at a sales presentation is
20 required;

21 (2) the name and street address of the person who is
22 soliciting attendance at a sales presentation;

23 (3) a description of the product or service being
24 sold;

25 (4) each requirement, restriction, qualification, and
26 other condition that must be satisfied for a person to enter the
27 contest, including:

1 (A) any deadline by which the person must visit
2 the location or attend the sales presentation to qualify to receive
3 a prize; and

4 (B) the approximate duration of the sales
5 presentation;

6 (5) a statement of the odds of winning each prize
7 offered, expressed as a ratio in Arabic numerals;

8 (6) the geographical area or states in which the
9 contest will be conducted;

10 (7) the beginning and ending dates of the contest
11 period;

12 (8) the identity and address of each person
13 responsible for awarding prizes;

14 (9) that all unclaimed prizes will be awarded by a
15 drawing and the date of the drawing; and

16 (10) all other rules and terms of the contest.

17 (b) A person engaged in the preparation, promotion, sale,
18 distribution, or use of a matched contest shall disclose:

19 (1) the retail value of a prize; and

20 (2) clearly and conspicuously in at least 10-point
21 type that airfare, lodging, or both are not included as part of a
22 prize that is a trip or recreational activity to the extent that
23 either or both are not included. (Bus. & Com. Code, Secs. 40.066(a)
24 (part), (b).)

25 Sec. 621.105. PROHIBITED ACTS RELATING TO MATCHED CONTEST.

26 A person engaged in the preparation, promotion, sale, distribution,
27 or use of a matched contest may not:

1 (1) use the term "prize" or a similar term in a false,
2 misleading, or deceptive manner;

3 (2) represent in soliciting a person to enter or
4 participate in the contest that the person is a "finalist," "major
5 award winner," "grand prize recipient," or "winner" or that a
6 person has "won," "will win," or "will be awarded" or use words or
7 phrases of similar meaning unless the representation is true;

8 (3) represent that a prize has a sponsor, approval,
9 characteristic, ingredient, use, benefit, quantity, status,
10 affiliation, connection, or identity that the prize does not have;

11 (4) represent that a prize is of a particular
12 standard, quality, grade, style, or model if the prize is of
13 another;

14 (5) misrepresent the odds of winning a prize;

15 (6) misrepresent the rules or terms of participation
16 in the contest;

17 (7) represent that:

18 (A) a number, ticket, coupon, symbol, or entry
19 form confers or will confer an advantage on a person that another
20 person does not have or has a value that other entries do not have;
21 or

22 (B) a person is more likely to win a prize than
23 another person;

24 (8) fail to obtain a person's express written consent
25 before using that person's name for a promotional purpose;

26 (9) use or distribute simulated checks or currency or
27 other simulated items of value unless the words

1 "SPECIMEN--NON-NEGOTIABLE" are clearly and conspicuously printed
2 on those items in at least 18-point type; or

3 (10) use a word or phrase that:

4 (A) simulates or causes confusion with a document
5 issued by an officer of a court or with the seal or name of a real or
6 fictitious governmental entity; or

7 (B) implies that the offeror is sending a court
8 document or legal document or that the offeror is a governmental
9 entity. (Bus. & Com. Code, Sec. 40.066(a) (part).)

10 Sec. 621.106. REQUIRED DISCLOSURES RELATING TO DRAWINGS.

11 (a) A person may not use a drawing unless the offeror clearly and
12 conspicuously discloses in writing in the offer:

13 (1) a statement of the odds of winning each prize
14 offered, expressed as a ratio in Arabic numerals, except as
15 provided by Subsection (c);

16 (2) the exact prizes to be awarded in the drawing;

17 (3) the beginning and ending dates of the contest
18 period;

19 (4) the date the drawing will occur; and

20 (5) the location at which the drawing will occur.

21 (b) A person engaged in the preparation, promotion, sale,
22 distribution, or use of a drawing shall disclose:

23 (1) the retail value of a prize; and

24 (2) clearly and conspicuously in at least 10-point
25 type that airfare, lodging, or both are not included in a prize that
26 is a trip or recreational activity to the extent that either or both
27 are not included.

1 (c) If the odds of winning a prize cannot be determined
2 because the total number of entries is not known, the offeror shall
3 make a statement to the effect that the odds of winning depend on
4 the total number of entries received. (Bus. & Com. Code, Secs.
5 40.067(a), (b) (part), (c).)

6 Sec. 621.107. PROHIBITED ACTS RELATING TO DRAWINGS. A
7 person engaged in the preparation, promotion, sale, distribution,
8 or use of a drawing may not:

9 (1) use the term "prize" or a similar term in a false,
10 misleading, or deceptive manner;

11 (2) fail to provide the prize as represented at the
12 conclusion of the drawing;

13 (3) represent that a prize has a sponsor, approval,
14 characteristic, ingredient, use, benefit, quantity, status,
15 affiliation, connection, or identity that the prize does not have;

16 (4) represent that a prize is of a particular
17 standard, quality, grade, style, or model if the prize is of
18 another;

19 (5) misrepresent the odds of winning a prize; or

20 (6) misrepresent the rules or terms of participation
21 in the drawing. (Bus. & Com. Code, Sec. 40.067(b) (part).)

22 Sec. 621.108. CONDITIONING PRIZE ON PAYMENT OF
23 CONSIDERATION, CHARGE, OR EXPENSE PROHIBITED; EXCEPTIONS. (a)
24 Except as provided by Subsection (b), an offeror may not notify a
25 person that the person has won a prize, will receive a prize, or has
26 a chance to win or receive a prize if the receipt of the prize is
27 conditioned on the person paying consideration of any kind, paying

1 a charge, or incurring an expense.

2 (b) An offeror may notify a person that the person has won a
3 prize, will receive a prize, or has a chance to receive a prize that
4 is conditioned on the person paying:

5 (1) expenses incurred for travel to and from the sales
6 location; or

7 (2) a refundable deposit authorized under Section
8 621.006. (Bus. & Com. Code, Sec. 40.062.)

9 Sec. 621.109. CONDITIONING PRIZE ON PURCHASE PROHIBITED.

10 An offeror may not notify a person that the person has won a prize,
11 will receive a prize, or has a chance to win or receive a prize if
12 the receipt of the prize is conditioned on the person purchasing a
13 good or service unrelated to the prize. (Bus. & Com. Code, Sec.
14 40.063.)

15 [Sections 621.110-621.150 reserved for expansion]

16 SUBCHAPTER D. FULFILLMENT OF GIFT AND PRIZE OFFERS

17 Sec. 621.151. AVAILABILITY AND AWARDED OF GIFT OR PRIZE.

18 (a) Subject to Sections 621.152-621.154, an offeror shall:

19 (1) in a gift offer, provide each gift as represented
20 to each person who attends a sales presentation; or

21 (2) in a matched contest, award each prize as
22 represented on the entry form to each person who presents a winning
23 entry.

24 (b) An offeror shall have available at the sales location a
25 sufficient quantity of:

26 (1) each gift to meet the reasonable anticipated
27 response to the offer; or

1 (2) each prize to meet the reasonable anticipated
2 number of prize winners.

3 (c) Except as provided by Sections 621.152-621.154, an
4 offeror may not provide a coupon book, a discount book, or a
5 certificate or voucher that entitles the holder to redeem the
6 certificate or voucher for a gift or prize required to be available
7 under this section. (Bus. & Com. Code, Secs. 40.006(a), (b), (c).)

8 Sec. 621.152. RAINCHECK REQUIREMENTS. Subject to Section
9 621.153(a), if the response to an offer exceeds the number of gifts
10 or major or minor prizes, as applicable, available at the sales
11 location, the offeror, at the time of the visit or, if a sales
12 presentation is required, at the conclusion of the sales
13 presentation, shall tender to the recipient of the offer a
14 raincheck for the gift or prize represented in the offer. Except as
15 provided by Section 621.153(b), the offeror shall send that exact
16 gift or prize to the recipient, without cost to the recipient, not
17 later than the 14th day after the date the recipient visits the
18 sales location or attends the sales presentation. The offeror
19 shall obtain a return receipt from the shipper verifying that the
20 gift or prize was delivered to the recipient. (Bus. & Com. Code,
21 Sec. 40.006(d).)

22 Sec. 621.153. ISSUANCE OF CHECK OR MONEY ORDER IN LIEU OF
23 GIFT OR MINOR PRIZE. (a) An offeror who knows at the time a
24 recipient of an offer visits a sales location or attends a sales
25 presentation that the gift or minor prize will not be available
26 within 14 days of the date of the visit or attendance shall at the
27 time of the visit or at the conclusion of the sales presentation

1 tender to the recipient, by cash or check, the amount of \$100.

2 (b) If, after the expiration of the 14th day after the date
3 the offeror issued a raincheck under Section 621.152 for a gift or
4 minor prize, the offeror has not sent the gift or prize, the offeror
5 shall send by mail to the recipient of the raincheck a check or
6 money order in the amount of \$100 payable to the recipient. The
7 offeror shall:

8 (1) send the check or money order not later than the
9 15th day after the date the offeror issued the raincheck; and

10 (2) obtain a return receipt from the United States
11 Postal Service that verifies that the check or money order was
12 delivered to the recipient. (Bus. & Com. Code, Secs. 40.006(e),
13 (f).)

14 Sec. 621.154. CERTIFICATE PERMITTED FOR LODGING, AIRFARE,
15 TRIP, OR RECREATIONAL ACTIVITY. An offeror may give the recipient
16 of a gift or prize involving lodging, airfare, a trip, or a
17 recreational activity a certificate that evidences the recipient's
18 right to the gift or prize. (Bus. & Com. Code, Sec. 40.006(g)
19 (part).)

20 [Sections 621.155-621.200 reserved for expansion]

21 SUBCHAPTER E. CONTEST RECORDS

22 Sec. 621.201. APPLICABILITY OF SUBCHAPTER. This subchapter
23 applies to a person who uses a contest as part of an advertising
24 plan or program. (Bus. & Com. Code, Sec. 40.091.)

25 Sec. 621.202. REQUIRED RECORDS FOR CONTESTS OTHER THAN
26 DRAWINGS. (a) For each contest other than a drawing, the offeror
27 shall maintain until the second anniversary of the date the last

1 prize was awarded:

2 (1) records of the identity and address of each person
3 who is responsible for developing, creating, sponsoring, or
4 implementing any part of the advertising plan or program;

5 (2) records that show that the winning numbers have
6 been deposited in the mail or otherwise made available to
7 recipients in accordance with the odds statement provided under
8 Section 621.104(a);

9 (3) a copy of each contest solicitation;

10 (4) records adequate to determine:

11 (A) the name and address of each contestant;

12 (B) the approximate date each contestant was sent
13 the solicitation used in the contest;

14 (C) the number of major prizes awarded;

15 (D) the date each major prize was awarded;

16 (E) the name, brand, type, model number, and
17 manufacturer of each prize offered;

18 (F) the method of computing the retail value of
19 each prize;

20 (G) the method of selecting major prize winners;

21 (H) the name and address of each major prize
22 winner; and

23 (I) the facts on which each representation or
24 disclosure made in connection with the contest was based and from
25 which the validity of the representation or disclosure can be
26 determined.

27 (b) Postal receipt records, affidavits of mailing, and a

1 list of winners or recipients of the major prizes satisfy the
2 requirements of Subsection (a)(2). (Bus. & Com. Code, Sec.
3 40.092.)

4 Sec. 621.203. REQUIRED RECORDS FOR DRAWINGS. (a) For each
5 drawing, the offeror shall maintain until the second anniversary of
6 the date the last major prize was awarded:

7 (1) records of the identity and address of each person
8 who is responsible for developing, creating, sponsoring, or
9 implementing any part of the advertising plan or program;

10 (2) records that show that the winning entry for each
11 major prize was selected entirely at random from all of the entries
12 received;

13 (3) a copy of each contest solicitation; and

14 (4) records adequate to determine:

15 (A) the total number of entries;

16 (B) the number of major prizes awarded;

17 (C) the date each major prize was awarded;

18 (D) the name, brand, type, model number, and
19 manufacturer of each prize offered;

20 (E) the method of computing the retail value of
21 each prize;

22 (F) the method of selecting winners; and

23 (G) the names and addresses of the winners.

24 (b) An affidavit from the person who conducted the drawing
25 and a list of winners or recipients of the major prizes satisfies
26 the requirements of Subsection (a)(2). (Bus. & Com. Code, Sec.
27 40.093.)

1 Sec. 621.204. DISCLOSURE OF MAJOR PRIZES AND WINNERS ON
2 REQUEST. A person who conducts a contest shall, at the end of the
3 contest period, provide to any person who requests the information:

4 (1) the names of all major prize winners; and

5 (2) the prizes won by each winner. (Bus. & Com. Code,
6 Sec. 40.094.)

7 Sec. 621.205. RECORDS AVAILABLE TO ATTORNEY GENERAL. A
8 person who receives a written request from the attorney general for
9 the records required under this subchapter shall make the records
10 available to the attorney general not later than the 30th day after
11 the date the person received the request. (Bus. & Com. Code, Sec.
12 40.095.)

13 [Sections 621.206-621.250 reserved for expansion]

14 SUBCHAPTER F. ENFORCEMENT

15 Sec. 621.251. CRIMINAL PENALTY. (a) A person commits an
16 offense if the person knowingly violates this chapter.

17 (b) Except as provided by Subsection (c), an offense under
18 this section is a Class B misdemeanor.

19 (c) An offense under this section is:

20 (1) a Class A misdemeanor if it is shown at the trial
21 of the defendant that:

22 (A) the defendant has previously been convicted
23 of an offense under this section; and

24 (B) the offense for which the defendant is on
25 trial was committed not later than the fifth anniversary of the date
26 of the previous conviction; or

27 (2) a third degree felony if it is shown at the trial

1 of the defendant that:

2 (A) the defendant has previously been twice
3 convicted of an offense under this section; and

4 (B) the offense for which the defendant is on
5 trial was:

6 (i) intentional; and

7 (ii) committed not later than the fifth
8 anniversary of the earlier of the dates of two previous
9 convictions.

10 (d) Subsection (c)(2) does not apply to a violation of
11 Subchapter D.

12 (e) A person may not be prosecuted for more than one offense
13 involving the same promotion regardless of whether that promotion
14 is mailed or distributed to more than one person or is used at more
15 than one location. (Bus. & Com. Code, Sec. 40.121.)

16 Sec. 621.252. DECEPTIVE TRADE PRACTICE. A violation of
17 this chapter is a deceptive trade practice in addition to the
18 practices described by Subchapter E, Chapter 17, and is actionable
19 under that subchapter. (Bus. & Com. Code, Sec. 40.122.)

20 CHAPTER 622. SWEEPSTAKES

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 622.001. DEFINITIONS

23 Sec. 622.002. ACTS CONSTITUTING CONDUCTING SWEEPSTAKES

24 [Sections 622.003-622.050 reserved for expansion]

25 SUBCHAPTER B. APPLICABILITY OF CHAPTER

26 Sec. 622.051. CHAPTER LIMITED TO SWEEPSTAKES CONDUCTED

27 THROUGH MAIL; EXCEPTION

- 1 Sec. 622.052. PRIZE VALUE LESS THAN \$50,000
- 2 Sec. 622.053. ADVERTISEMENT OR INSERT IN MAGAZINE,
3 NEWSPAPER, OR CATALOG
- 4 Sec. 622.054. CHARITABLE RAFFLE
- 5 Sec. 622.055. SWEEPSTAKES REGULATED BY ALCOHOLIC
6 BEVERAGE CODE
- 7 Sec. 622.056. COMPANY REGULATED UNDER PUBLIC UTILITY
8 REGULATORY ACT
- 9 Sec. 622.057. AIR CARRIER; AIRMAN ASSOCIATION
- 10 Sec. 622.058. CERTAIN RECREATIONAL EVENTS
- 11 Sec. 622.059. CERTAIN FOOD PRODUCTS
- 12 Sec. 622.060. AUDIOVISUAL ENTERTAINMENT WORK, PRODUCT,
13 OR SOUND RECORDING
- 14 Sec. 622.061. CABLE SYSTEM
- 15 [Sections 622.062-622.100 reserved for expansion]
- 16 SUBCHAPTER C. PROHIBITED ACTS OR CONDUCT
- 17 Sec. 622.101. CONNECTING SWEEPSTAKES ENTRY OR
18 OPERATION TO ORDER OR PURCHASE
- 19 Sec. 622.102. USING MULTIPLE SWEEPSTAKES ENTRY
20 ADDRESSES OR MULTIPLE PURPOSES FOR
21 ADDRESS
- 22 Sec. 622.103. ALLOWING CHOICE OF PRIZE OR INDICATION
23 OF PREFERRED PRIZE CHARACTERISTICS
- 24 Sec. 622.104. SENDING SWEEPSTAKES MATERIAL THAT
25 INCLUDES CERTAIN STATEMENTS OR
26 IMPLICATIONS

- 1 Sec. 622.105. USING GAME PIECE TO CONVEY INFORMATION
2 OR OFFER TO ENTER
- 3 Sec. 622.106. PUBLISHING ADVERTISEMENTS OR RULES WITH
4 INCONSISTENT OR INCOMPLETE PRIZE
5 DESCRIPTIONS
- 6 Sec. 622.107. ENGAGING IN CONDUCT THAT FALSELY
7 INDICATES AN INDIVIDUAL HAS WON
- 8 Sec. 622.108. AWARDING MULTIPLE PRIZES
- 9 Sec. 622.109. MAILING CERTAIN OFFERS DURING PERIOD
10 FOLLOWING SWEEPSTAKES
- 11 Sec. 622.110. PROVIDING NAMES OR ADDRESSES USED IN
12 PROHIBITED SWEEPSTAKES
- 13 [Sections 622.111-622.150 reserved for expansion]
- 14 SUBCHAPTER D. ACTS OR CONDUCT NOT PROHIBITED
- 15 Sec. 622.151. DESCRIPTION OF METHOD OF CHOOSING WINNER
- 16 Sec. 622.152. NOTIFICATION OF AND AFFIDAVIT FROM
17 WINNER
- 18 [Sections 622.153-622.200 reserved for expansion]
- 19 SUBCHAPTER E. ENFORCEMENT
- 20 Sec. 622.201. ACTION BY ATTORNEY GENERAL; VENUE
- 21 Sec. 622.202. CIVIL PENALTY
- 22 Sec. 622.203. LIABILITY FOR PROVIDING NAMES OR
23 ADDRESSES USED IN PROHIBITED
24 SWEEPSTAKES
- 25 Sec. 622.204. INJUNCTIVE AND OTHER RELIEF
- 26 Sec. 622.205. NO PRIVATE RIGHT OF ACTION
- 27 Sec. 622.206. RECOVERY OF EXPENSES BY ATTORNEY GENERAL

CHAPTER 622. SWEEPSTAKES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 622.001. DEFINITIONS. In this chapter:

(1) "Credit card" means a card that, if covered by the law of this state, would be subject to a lender credit card agreement, as defined by Section 301.002, Finance Code, except that the term does not exclude a card that is subject to an agreement under which:

(A) the obligations are payable in full each month and not deferred; and

(B) no finance charge is assessed when the obligations are paid.

(2) "Debit card" means a card offered by an institution the deposits of which are insured by the Federal Deposit Insurance Corporation or another agency, corporation, or instrumentality chartered by the United States government.

(3) "Imply" means to use any means by which an implication can be conveyed, including:

(A) a statement, question, or request;

(B) conduct;

(C) a graphic or symbol; and

(D) lettering, coloring, font size, font style, or formatting.

(4) "Sweepstakes" means a contest that awards one or more prizes based on chance or the random selection of entries. (Bus. & Com. Code, Secs. 45.001(3), (4), (5), (7).)

Sec. 622.002. ACTS CONSTITUTING CONDUCTING SWEEPSTAKES.

1 For purposes of this chapter, a person conducts a sweepstakes if the
2 person distributes material that:

- 3 (1) promotes a sweepstakes;
4 (2) describes one or more sweepstakes prizes;
5 (3) states one or more sweepstakes rules;
6 (4) includes a current or future opportunity to enter
7 a sweepstakes; or

8 (5) provides a method for the recipient of the
9 material to obtain additional information about a sweepstakes.

10 (Bus. & Com. Code, Sec. 45.001(2).)

11 [Sections 622.003-622.050 reserved for expansion]

12 SUBCHAPTER B. APPLICABILITY OF CHAPTER

13 Sec. 622.051. CHAPTER LIMITED TO SWEEPSTAKES CONDUCTED
14 THROUGH MAIL; EXCEPTION. (a) This chapter applies only to a
15 sweepstakes conducted through the mail.

16 (b) This chapter does not apply to a sweepstakes for which
17 the only use of the mail is for a consumer to return an entry form to
18 the sweepstakes sponsor. (Bus. & Com. Code, Secs. 45.002 (part),
19 45.003(g).)

20 Sec. 622.052. PRIZE VALUE LESS THAN \$50,000. (a) This
21 chapter does not apply to a sweepstakes in which the value of the
22 most valuable prize is less than \$50,000.

23 (b) For purposes of this section, the value of a prize is the
24 greatest of the prize's:

- 25 (1) face value;
26 (2) fair market value; or
27 (3) present financial value. (Bus. & Com. Code, Sec.

1 45.003(j).)

2 Sec. 622.053. ADVERTISEMENT OR INSERT IN MAGAZINE,
3 NEWSPAPER, OR CATALOG. This chapter does not apply to a sweepstakes
4 conducted through an advertisement or insert in:

5 (1) a magazine or newspaper:

6 (A) that is a publication in which more than 40
7 percent of the total column inches in each issue consist of
8 advertising space purchased by companies other than:

9 (i) the publisher;

10 (ii) an affiliate of the publisher; or

11 (iii) a vendor for the publisher or an
12 affiliate; and

13 (B) that is a publication for which more than 50
14 percent of the total number of copies distributed of each issue are
15 provided to customers who paid for the copy; or

16 (2) a catalog that is a promotional booklet listing
17 merchandise for sale and that:

18 (A) is at least 24 pages long;

19 (B) has a circulation of at least 250,000; and

20 (C) either:

21 (i) requires customers to go to a physical
22 location to purchase the advertised items; or

23 (ii) is published by a company that derives
24 more than 50 percent of the company's total gross revenue from sales
25 occurring at physical locations. (Bus. & Com. Code, Secs.
26 45.001(1), (6), 45.003(a).)

27 Sec. 622.054. CHARITABLE RAFFLE. This chapter does not

1 apply to a charitable raffle regulated by Chapter 2002, Occupations
2 Code. (Bus. & Com. Code, Sec. 45.003(b).)

3 Sec. 622.055. SWEEPSTAKES REGULATED BY ALCOHOLIC BEVERAGE
4 CODE. This chapter does not apply to a sweepstakes regulated by the
5 Alcoholic Beverage Code. (Bus. & Com. Code, Sec. 45.003(c).)

6 Sec. 622.056. COMPANY REGULATED UNDER PUBLIC UTILITY
7 REGULATORY ACT. This chapter does not apply to a company regulated
8 under Title 2, Utilities Code. (Bus. & Com. Code, Sec. 45.003(d).)

9 Sec. 622.057. AIR CARRIER; AIRMAN ASSOCIATION. This
10 chapter does not apply to:

11 (1) a company that is an air carrier subject to Title
12 49, United States Code; or

13 (2) a nonprofit association of airmen who are subject
14 to that title. (Bus. & Com. Code, Sec. 45.003(e).)

15 Sec. 622.058. CERTAIN RECREATIONAL EVENTS. This chapter
16 does not apply to a drawing for the opportunity to participate in a
17 hunting, fishing, or other recreational event conducted by the
18 Parks and Wildlife Department. (Bus. & Com. Code, Sec. 45.003(f).)

19 Sec. 622.059. CERTAIN FOOD PRODUCTS. This chapter does not
20 apply to a sweepstakes promoting one or more food products
21 regulated by the United States Food and Drug Administration or the
22 United States Department of Agriculture. (Bus. & Com. Code, Sec.
23 45.003(n).)

24 Sec. 622.060. AUDIOVISUAL ENTERTAINMENT WORK, PRODUCT, OR
25 SOUND RECORDING. This chapter does not apply to a company if 75
26 percent or more of the company's business is:

27 (1) the systematic development, planning, and

1 execution of creating audiovisual entertainment works, products,
2 or sound recordings; and

3 (2) the distribution, sale, and marketing of those
4 works, products, or recordings. (Bus. & Com. Code, Sec. 45.003(o)
5 (part).)

6 Sec. 622.061. CABLE SYSTEM. This chapter does not apply to
7 a company that owns or operates a cable system, as defined by 47
8 U.S.C. Section 522, as amended. (Bus. & Com. Code, Sec. 45.003(o)
9 (part).)

10 [Sections 622.062-622.100 reserved for expansion]

11 SUBCHAPTER C. PROHIBITED ACTS OR CONDUCT

12 Sec. 622.101. CONNECTING SWEEPSTAKES ENTRY OR OPERATION TO
13 ORDER OR PURCHASE. (a) A person conducting a sweepstakes may not
14 use a mechanism for entering the sweepstakes that:

15 (1) has any connection to ordering or purchasing a
16 good or service;

17 (2) is not identical for all individuals entering the
18 sweepstakes; and

19 (3) does not have printed on the entry form, in a font
20 size at least as large as the largest font size used on the entry
21 form, the following language: "Buying Will Not Help You Win. Your
22 chances of winning without making a purchase are the same as the
23 chances of someone who purchases something. It is illegal to give
24 any advantage to buyers in a sweepstakes."

25 (b) A person conducting a sweepstakes may not:

26 (1) require an individual to order, purchase, or
27 promise to purchase a good or service to enter the sweepstakes;

1 (2) automatically enter an individual in the
2 sweepstakes because the individual ordered, purchased, or promised
3 to order or purchase a good or service; or

4 (3) solicit business using an order form or purchasing
5 mechanism that has any role in the operation of the sweepstakes.

6 (c) Subsections (a)(1) and (b)(3) do not apply to a single
7 sheet of paper that contains both a sweepstakes entry form and an
8 order form if:

9 (1) the order form is perforated or detachable; and

10 (2) the entry form must be separated from the order
11 form and returned to a different address than the order form.

12 (d) Subsections (a) and (b)(2) and (3) do not apply to a
13 sweepstakes offered to promote a credit card or debit card if the
14 official rules of the sweepstakes provide that consumers are
15 entered in the sweepstakes based on the number of purchases made or
16 the amount of money spent. The exception provided by this
17 subsection applies only to a person offering a sweepstakes who
18 qualified as an issuer as of January 1, 2001.

19 (e) Subsections (a) and (b)(2) and (3) do not apply to a
20 company offering a sweepstakes in which the consumer must go to a
21 physical location to obtain or use the goods or services being sold
22 by the company. (Bus. & Com. Code, Secs. 45.002 (part), 45.003(k),
23 (l), (m).)

24 Sec. 622.102. USING MULTIPLE SWEEPSTAKES ENTRY ADDRESSES OR
25 MULTIPLE PURPOSES FOR ADDRESS. A person conducting a sweepstakes
26 who provides for entering the sweepstakes by mail may not:

27 (1) accept entries at more than one address; or

1 (2) use the address for entry in the sweepstakes for
2 any other purpose. (Bus. & Com. Code, Sec. 45.002 (part).)

3 Sec. 622.103. ALLOWING CHOICE OF PRIZE OR INDICATION OF
4 PREFERRED PRIZE CHARACTERISTICS. A person conducting a sweepstakes
5 may not:

6 (1) solicit an individual to enter the sweepstakes by
7 invitation or other opportunity; and

8 (2) allow the individual to choose, or indicate the
9 preferred characteristics of, a prize to be awarded in the
10 sweepstakes unless the choice or indication:

11 (A) is made on the sweepstakes entry form; and

12 (B) does not appear on, and is not in any way
13 connected to, an order form or other purchasing mechanism. (Bus. &
14 Com. Code, Sec. 45.002 (part).)

15 Sec. 622.104. SENDING SWEEPSTAKES MATERIAL THAT INCLUDES
16 CERTAIN STATEMENTS OR IMPLICATIONS. A person conducting a
17 sweepstakes may not send material accompanying or relating to the
18 sweepstakes or an offer to enter the sweepstakes that:

19 (1) states or implies that:

20 (A) an individual must comply with a restriction
21 or condition to enter the sweepstakes, unless all individuals
22 entering the sweepstakes are required to comply with the identical
23 restriction or condition;

24 (B) an individual's chances of winning a prize in
25 the sweepstakes are higher, lower, or different in any way because
26 of a factor or circumstance that does not relate to the manner in
27 which a winner is selected;

1 (C) a winner will be selected at a time or place
2 or in a manner that is different from the actual time or place at
3 which or manner in which a winner is selected;

4 (D) an individual who orders or purchases a good
5 or service will receive a benefit or be treated differently in the
6 sweepstakes in comparison to an individual who does not order or
7 purchase a good or service; or

8 (E) an individual who does not order or purchase
9 a good or service will be disadvantaged or treated differently in
10 the sweepstakes in comparison to an individual who orders or
11 purchases a good or service;

12 (2) states or implies falsely that the individual
13 receiving the material has received special treatment or personal
14 attention from the offeror of the sweepstakes or any officer,
15 employee, or agent of the offeror; or

16 (3) states that the recipient of the material:

17 (A) is a winner, if the recipient is not a winner;

18 (B) may be a winner;

19 (C) will be a winner if certain conditions are
20 met or certain events occur;

21 (D) may be or will be among the group from which a
22 winner will be selected; or

23 (E) has in any way a better chance than another
24 individual of being chosen as a winner. (Bus. & Com. Code, Sec.
25 45.002 (part).)

26 Sec. 622.105. USING GAME PIECE TO CONVEY INFORMATION OR
27 OFFER TO ENTER. A person conducting a sweepstakes may not convey

1 information about the sweepstakes or an offer to enter the
2 sweepstakes by using a scratch-off device or any other game piece
3 that suggests an element of chance or luck. (Bus. & Com. Code, Sec.
4 45.002 (part).)

5 Sec. 622.106. PUBLISHING ADVERTISEMENTS OR RULES WITH
6 INCONSISTENT OR INCOMPLETE PRIZE DESCRIPTIONS. A person conducting
7 a sweepstakes may not publish or cause to be published:

8 (1) different advertisements for the same sweepstakes
9 that contain inconsistent descriptions of the grand prize to be
10 awarded through the sweepstakes; or

11 (2) official rules of the sweepstakes that do not
12 uniquely identify the prizes to be awarded and the date the prizes
13 will be awarded. (Bus. & Com. Code, Sec. 45.002 (part).)

14 Sec. 622.107. ENGAGING IN CONDUCT THAT FALSELY INDICATES AN
15 INDIVIDUAL HAS WON. A person conducting a sweepstakes may not:

16 (1) ask an individual to provide any information or
17 take any action consistent with the individual winning a
18 sweepstakes prize, unless the individual has won a sweepstakes
19 prize; or

20 (2) provide an individual who has not yet won a
21 sweepstakes prize with a document or other item that simulates an
22 event, circumstance, or condition connected with being a
23 sweepstakes winner. (Bus. & Com. Code, Sec. 45.002 (part).)

24 Sec. 622.108. AWARDING MULTIPLE PRIZES. A person
25 conducting a sweepstakes may not award multiple prizes in the
26 sweepstakes unless all prizes are awarded on the same date and
27 through the same selection process. (Bus. & Com. Code, Sec. 45.002

1 (part).)

2 Sec. 622.109. MAILING CERTAIN OFFERS DURING PERIOD
3 FOLLOWING SWEEPSTAKES. A person conducting a sweepstakes may not,
4 during the 30-day period immediately following the last date on
5 which the person conducted the sweepstakes through the mail, offer
6 through the mail:

- 7 (1) an opportunity to enter a sweepstakes; or
8 (2) a nonsweepstakes prize, gift, premium, giveaway,
9 or skill contest. (Bus. & Com. Code, Sec. 45.002 (part).)

10 Sec. 622.110. PROVIDING NAMES OR ADDRESSES USED IN
11 PROHIBITED SWEEPSTAKES. A person may not provide names or
12 addresses of residents of this state that are used in conducting a
13 sweepstakes that the person knows violates this chapter. (Bus. &
14 Com. Code, Sec. 45.004(d) (part).)

15 [Sections 622.111-622.150 reserved for expansion]

16 SUBCHAPTER D. ACTS OR CONDUCT NOT PROHIBITED

17 Sec. 622.151. DESCRIPTION OF METHOD OF CHOOSING WINNER.
18 This chapter does not prohibit a sweepstakes sponsor from
19 describing in the official sweepstakes rules the method to be used
20 in choosing a winner. (Bus. & Com. Code, Sec. 45.003(h) (part).)

21 Sec. 622.152. NOTIFICATION OF AND AFFIDAVIT FROM WINNER.
22 This chapter does not prohibit a sweepstakes sponsor, after a
23 winner has been chosen, from:

- 24 (1) notifying an individual chosen as a winner; or
25 (2) obtaining from an individual chosen as a winner an
26 affidavit to verify that the individual:
27 (A) is eligible to win the prize; and

1 (B) has complied with the sweepstakes rules.
2 (Bus. & Com. Code, Secs. 45.003(h) (part), (i).)

3 [Sections 622.153-622.200 reserved for expansion]

4 SUBCHAPTER E. ENFORCEMENT

5 Sec. 622.201. ACTION BY ATTORNEY GENERAL; VENUE. The
6 attorney general may bring an action under this chapter by filing
7 suit in a district court in Travis County or in any county in which a
8 violation occurred. (Bus. & Com. Code, Sec. 45.004(a).)

9 Sec. 622.202. CIVIL PENALTY. (a) The court shall award the
10 attorney general a civil penalty of not less than \$5,000 or more
11 than \$50,000 for each violation found.

12 (b) If the material accompanying or relating to a
13 sweepstakes or an offer to enter a sweepstakes contains multiple
14 statements, implications, representations, or offers that are
15 prohibited by this chapter, each statement, implication,
16 representation, or offer is a separate violation and results in a
17 separate civil penalty. Each individual who receives the material
18 constitutes an additional and separate group of violations of this
19 chapter. (Bus. & Com. Code, Secs. 45.004(b), (c).)

20 Sec. 622.203. LIABILITY FOR PROVIDING NAMES OR ADDRESSES
21 USED IN PROHIBITED SWEEPSTAKES. (a) A person who violates Section
22 622.110 is liable for the cumulative civil penalties that result
23 from the person's conduct.

24 (b) Liability of a person under Subsection (a) does not
25 reduce the liability of the person who conducted the sweepstakes.
26 (Bus. & Com. Code, Sec. 45.004(d) (part).)

27 Sec. 622.204. INJUNCTIVE AND OTHER RELIEF. The court may

1 also award injunctive relief or other equitable or ancillary relief
2 that is reasonably necessary to prevent violations of this chapter.
3 (Bus. & Com. Code, Sec. 45.004(g).)

4 Sec. 622.205. NO PRIVATE RIGHT OF ACTION. This chapter does
5 not create a private right of action. (Bus. & Com. Code, Sec.
6 45.004(h).)

7 Sec. 622.206. RECOVERY OF EXPENSES BY ATTORNEY GENERAL. If
8 the attorney general substantially prevails, the court shall award
9 the attorney general reasonable expenses incurred in recovering a
10 civil penalty under this subchapter, including court costs,
11 reasonable attorney's fees, reasonable investigative costs,
12 witness fees, and deposition expenses. (Bus. & Com. Code, Sec.
13 45.004(e).)

14 TITLE 14. RECORDINGS

15 CHAPTER 641. UNAUTHORIZED RECORDINGS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 641.001. DEFINITIONS

18 [Sections 641.002-641.050 reserved for expansion]

19 SUBCHAPTER B. PROHIBITED PRACTICES; PENALTIES

20 Sec. 641.051. UNAUTHORIZED DUPLICATION OF CERTAIN
21 RECORDINGS

22 Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE
23 PERFORMANCE

24 Sec. 641.053. UNAUTHORIZED OPERATION OF RECORDING
25 DEVICE IN MOTION PICTURE THEATER

26 Sec. 641.054. LABELING

27 Sec. 641.055. FORFEITURE

1 Sec. 641.056. PRIVATE RIGHTS AND REMEDIES NOT AFFECTED

2 Sec. 641.057. PENALTIES CUMULATIVE

3 CHAPTER 641. UNAUTHORIZED RECORDINGS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 641.001. DEFINITIONS. In this chapter:

6 (1) "Fix" means to embody in a recording or other
7 tangible medium of expression, by or under the authority of the
8 author, so that the matter embodied is sufficiently permanent or
9 stable to permit it to be perceived, reproduced, or otherwise
10 communicated for a period of more than transitory duration.

11 (2) "Live performance" means a recitation, rendering,
12 or playing of a series, in an audible sequence, of:

13 (A) images;

14 (B) musical, spoken, or other sounds; or

15 (C) a combination of images and sounds.

16 (3) "Owner" means a person who owns the sounds fixed in
17 a master phonograph record, master disc, master tape, master film,
18 or other recording:

19 (A) on which sound is recorded; and

20 (B) from which the transferred recorded sounds
21 are directly or indirectly derived.

22 (4) "Recording" means a tangible medium on which
23 sounds, images, or both are recorded or otherwise stored,
24 including:

25 (A) an original phonograph record, disc, tape,
26 audio or video cassette, wire, film, or other medium now existing or
27 later developed; or

1 (B) a copy or reproduction that wholly or partly
2 duplicates the original. (Bus. & Com. Code, Sec. 35.91.)

3 [Sections 641.002-641.050 reserved for expansion]

4 SUBCHAPTER B. PROHIBITED PRACTICES; PENALTIES

5 Sec. 641.051. UNAUTHORIZED DUPLICATION OF CERTAIN
6 RECORDINGS. (a) This section applies only to a recording that was
7 initially fixed before February 15, 1972.

8 (b) A person commits an offense if the person:

9 (1) knowingly reproduces for sale or causes to be
10 transferred any recording with intent to sell the recording or
11 cause the recording to be sold or use a recording or cause the
12 recording to be used for commercial advantage or private financial
13 gain through public performance without the consent of the owner;

14 (2) with the knowledge that the sounds on a recording
15 have been reproduced or transferred without the consent of the
16 owner, transports the recording within this state for commercial
17 advantage or private financial gain; or

18 (3) with the knowledge that a recording has been
19 reproduced or transferred without the consent of the owner:

20 (A) advertises, offers for sale, sells, or rents
21 the recording;

22 (B) causes the sale, resale, or rental of the
23 recording; or

24 (C) possesses the recording for a purpose
25 described by Paragraph (A) or (B).

26 (c) An offense under this section is punishable by:

27 (1) imprisonment for a term of not more than five

1 years, a fine not to exceed \$250,000, or both, if:

2 (A) the offense involves at least 1,000
3 unauthorized recordings during a 180-day period; or

4 (B) the defendant has been previously convicted
5 under this section;

6 (2) imprisonment for a term of not more than two years,
7 a fine not to exceed \$250,000, or both, if the offense involves more
8 than 100 but fewer than 1,000 unauthorized recordings during a
9 180-day period; or

10 (3) confinement in the county jail for a term of not
11 more than one year, a fine not to exceed \$25,000, or both, if the
12 offense is not otherwise punishable under Subdivision (1) or (2).

13 (d) This section does not apply to any fees due to the
14 American Society of Composers, Authors and Publishers. (Bus. &
15 Com. Code, Secs. 35.92(a), (b), (d).)

16 Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE.

17 (a) A person commits an offense if the person, with the knowledge
18 that a live performance has been recorded or fixed without the
19 consent of the owner:

20 (1) for commercial advantage or private financial
21 gain, advertises, offers for sale, sells, rents, or transports,
22 causes the sale, resale, rental, or transportation of, or possesses
23 for one or more of these purposes a recording containing sounds of
24 the live performance; or

25 (2) with the intent to sell for commercial advantage
26 or private financial gain, records or fixes the live performance,
27 or causes the live performance to be recorded or fixed on a

1 recording.

2 (b) An offense under this section is punishable by:

3 (1) imprisonment for a term of not more than five
4 years, a fine not to exceed \$250,000, or both, if:

5 (A) the offense involves at least 1,000
6 unauthorized recordings embodying sound or at least 65 unauthorized
7 audiovisual recordings during a 180-day period; or

8 (B) the defendant has been previously convicted
9 under this section;

10 (2) imprisonment for a term of not more than two years,
11 a fine not to exceed \$250,000, or both, if the offense involves more
12 than 100 but fewer than 1,000 unauthorized recordings embodying
13 sound or more than seven but fewer than 65 unauthorized audiovisual
14 recordings during a 180-day period; or

15 (3) confinement in the county jail for a term of not
16 more than one year, a fine not to exceed \$25,000, or both, if the
17 offense is not otherwise punishable under Subdivision (1) or (2).

18 (c) In the absence of a written agreement or law to the
19 contrary, the performer or performers of a live performance are
20 presumed to own the rights to record or fix those sounds.

21 (d) For purposes of this section, a person authorized to
22 maintain custody and control over business records that reflect
23 whether the owner of a live performance consented to having the live
24 performance recorded or fixed is a proper witness in a proceeding
25 regarding the issue of consent. A witness called under this
26 subsection is subject to the rules of evidence relating to the
27 competency of a witness to testify and the relevance and

1 admissibility of the testimony offered. (Bus. & Com. Code, Secs.
2 35.93(a), (b), (c), (d).)

3 Sec. 641.053. UNAUTHORIZED OPERATION OF RECORDING DEVICE IN
4 MOTION PICTURE THEATER. (a) In this section:

5 (1) "Audiovisual recording function" means the
6 capability of a device to record or transmit a motion picture or any
7 part of a motion picture by means of any technology now known or
8 later developed.

9 (2) "Motion picture theater" means a movie theater,
10 screening room, or other place primarily used to exhibit a motion
11 picture.

12 (b) A person commits an offense if, without the consent of
13 the owner of the theater, the person, with the intent to record a
14 motion picture, knowingly operates the audiovisual recording
15 function of any device in a motion picture theater while the motion
16 picture is being exhibited.

17 (c) An offense under this section is a Class A misdemeanor,
18 except that the offense is:

19 (1) a state jail felony if the person has been
20 previously convicted one time of an offense under this section; or

21 (2) a felony of the third degree if the person has been
22 previously convicted two or more times of an offense under this
23 section.

24 (d) It is a defense to prosecution under this section that
25 the audiovisual recording function of the device was operated
26 solely for official law enforcement purposes.

27 (e) If conduct constituting an offense under this section

1 also constitutes an offense under another law, the actor may be
2 prosecuted under this section, the other law, or both.

3 (f) A person who reasonably believes that another has
4 knowingly operated the audiovisual recording function of a device
5 in a motion picture theater in violation of this section is
6 privileged to detain that other person in a reasonable manner and
7 for a reasonable time to allow for the arrival of law enforcement
8 authorities. (Bus. & Com. Code, Sec. 35.935.)

9 Sec. 641.054. LABELING. (a) A person commits an offense
10 if:

11 (1) for commercial advantage or private financial
12 gain, the person knowingly:

13 (A) advertises, offers for sale, sells, rents, or
14 transports a recording;

15 (B) causes the sale, resale, rental, or
16 transportation of a recording; or

17 (C) possesses a recording for a purpose described
18 by Paragraph (A) or (B); and

19 (2) the outside cover, box, or jacket of the recording
20 does not clearly and conspicuously disclose:

21 (A) the actual name and address of the
22 manufacturer; and

23 (B) the name of the performer or group.

24 (b) An offense under this section is punishable by:

25 (1) imprisonment for a term of not more than five
26 years, a fine not to exceed \$250,000, or both, if:

27 (A) the offense involves at least 65 unauthorized

1 recordings during a 180-day period; or

2 (B) the defendant has been previously convicted
3 under this section;

4 (2) imprisonment for a term of not more than two years,
5 a fine not to exceed \$250,000, or both, if the offense involves more
6 than seven but fewer than 65 unauthorized recordings during a
7 180-day period; or

8 (3) confinement in the county jail for a term of not
9 more than one year, a fine not to exceed \$25,000, or both, if the
10 offense is not otherwise punishable under Subdivision (1) or (2).
11 (Bus. & Com. Code, Secs. 35.94(a), (b).)

12 Sec. 641.055. FORFEITURE. If a person is convicted of a
13 violation of this chapter, the court in its judgment of conviction
14 shall order the forfeiture and destruction or other disposition of:

15 (1) all recordings on which the conviction is based;
16 and

17 (2) all devices and equipment used or intended to be
18 used in the manufacture of the recordings on which the conviction is
19 based. (Bus. & Com. Code, Sec. 35.95.)

20 Sec. 641.056. PRIVATE RIGHTS AND REMEDIES NOT AFFECTED.
21 Sections 641.051, 641.052, and 641.054 do not affect the rights and
22 remedies of a party in private litigation. (Bus. & Com. Code, Secs.
23 35.92(c), 35.93(e), 35.94(c).)

24 Sec. 641.057. PENALTIES CUMULATIVE. A penalty provided by
25 this chapter is in addition to any other penalty provided under
26 other law. (Bus. & Com. Code, Sec. 35.96.)

1 TITLE 15. CURRENCY AND TRADE

2 SUBTITLE A. CURRENCY

3 CHAPTER 661. EUROPEAN UNION CURRENCY CONVERSION

4 Sec. 661.001. DEFINITIONS

5 Sec. 661.002. APPLICABILITY OF CHAPTER

6 Sec. 661.003. CONFLICTS OF LAW

7 Sec. 661.004. NO NEGATIVE INFERENCE OR PRESUMPTION

8 CREATED

9 Sec. 661.005. CONTINUITY OF CONTRACT

10 Sec. 661.006. EFFECT ON CERTAIN AGREEMENTS

11 CHAPTER 661. EUROPEAN UNION CURRENCY CONVERSION

12 Sec. 661.001. DEFINITIONS. In this chapter:

13 (1) "Euro" means the currency of the member states of
14 the European Community, as amended by the Treaty on European Union.
15 The term is abbreviated as EUR.

16 (2) "European currency unit" means the currency basket
17 periodically used as the unit of account of the European Community,
18 as defined by Regulation No. 3320/94 of the Council of the European
19 Union and as referred to in Article 109g of the treaty establishing
20 the European Community, as amended by the Treaty on European Union.
21 The term is abbreviated as ECU.

22 (3) "Introduction of the euro" means the periodic
23 implementation of economic and monetary union in member states of
24 the European Union in accordance with the Treaty on European Union.

25 (4) "Treaty on European Union" means the Treaty on
26 European Union of February 7, 1992. (Bus. & Com. Code, Sec.
27 42.001.)

1 Sec. 661.002. APPLICABILITY OF CHAPTER. This chapter
2 applies to each contract, security, and instrument, including a
3 commercial contract, governed by the laws of this state. (Bus. &
4 Com. Code, Sec. 42.002(a).)

5 Sec. 661.003. CONFLICTS OF LAW. This chapter prevails to
6 the extent of any conflict between this chapter and any other law of
7 this state. (Bus. & Com. Code, Sec. 42.003.)

8 Sec. 661.004. NO NEGATIVE INFERENCE OR PRESUMPTION CREATED.
9 With respect to currency alteration other than the introduction of
10 the euro, this chapter does not create any negative inference or
11 negative presumption regarding the validity or enforceability of a
12 contract, security, or instrument denominated wholly or partly in a
13 currency affected by the alteration. (Bus. & Com. Code, Sec.
14 42.002(b).)

15 Sec. 661.005. CONTINUITY OF CONTRACT. (a) If a subject or
16 medium of payment of a contract, security, or instrument is the
17 European currency unit or a currency that has been substituted or
18 replaced by the euro, the euro is a commercially reasonable
19 substitute and substantial equivalent that may be:

20 (1) used in determining the value of the European
21 currency unit or currency, as appropriate; or

22 (2) tendered, in each case, at the conversion rate
23 specified in, and otherwise computed in accordance with, the
24 regulations adopted by the Council of the European Union.

25 (b) A person may perform any obligation described by
26 Subsection (a) in euros or in the currency or currencies originally
27 designated in the contract, security, or instrument if that

1 currency or those currencies remain legal tender, but the person
2 may not perform the obligation in any other currency, regardless of
3 whether that other currency:

- 4 (1) has been substituted or replaced by the euro; or
- 5 (2) is considered a denomination of the euro and has a
6 fixed conversion rate with respect to the euro.

7 (c) The following occurrences are not considered a
8 discharge of, do not excuse performance under, and do not give a
9 party the right to unilaterally alter or terminate a contract,
10 security, or instrument:

- 11 (1) the introduction of the euro;
- 12 (2) the tender of euros in connection with any
13 obligation described by Subsection (a);
- 14 (3) the determination of the value of any obligation
15 described by Subsection (a); or
- 16 (4) the computation or determination of the subject or
17 medium of payment of a contract, security, or instrument with
18 reference to an interest rate or any other basis that has been
19 substituted or replaced because of the introduction of the euro and
20 that is a commercially reasonable substitute and substantial
21 equivalent. (Bus. & Com. Code, Sec. 42.004.)

22 Sec. 661.006. EFFECT ON CERTAIN AGREEMENTS. This chapter
23 does not alter or impair an agreement between parties that
24 specifically relates to the introduction of the euro. (Bus. & Com.
25 Code, Sec. 42.005.)

26 [Chapters 662-670 reserved for expansion]

1 SUBTITLE B. PORT OF ENTRY AUTHORITIES

2 CHAPTER 671. CITY OF LAREDO PORT OF ENTRY AUTHORITY

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 671.001. DEFINITIONS

5 Sec. 671.002. CREATION OF AUTHORITY

6 Sec. 671.003. AUTHORITY JURISDICTION

7 [Sections 671.004-671.050 reserved for expansion]

8 SUBCHAPTER B. GOVERNING BOARD

9 Sec. 671.051. COMPOSITION OF BOARD

10 Sec. 671.052. BOARD TERMS; VACANCY

11 Sec. 671.053. OFFICERS

12 Sec. 671.054. REMOVAL

13 Sec. 671.055. COMPENSATION; REIMBURSEMENT

14 [Sections 671.056-671.100 reserved for expansion]

15 SUBCHAPTER C. POWERS AND DUTIES

16 Sec. 671.101. FEES

17 Sec. 671.102. USE OF MONEY

18 Sec. 671.103. EFFECT OF AUTHORITY ACTION; CITY

19 APPROVAL

20 Sec. 671.104. AD VALOREM TAXES AND BONDS PROHIBITED

21 Sec. 671.105. DEPOSITORY; ORDER TO DISBURSE

22 Sec. 671.106. AUDIT

23 CHAPTER 671. CITY OF LAREDO PORT OF ENTRY AUTHORITY

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 671.001. DEFINITIONS. In this chapter:

26 (1) "Authority" means the City of Laredo Port of Entry
27 Authority created under this chapter.

1 (2) "Board" means the governing board of the
2 authority.

3 (3) "City" means the city of Laredo.

4 (4) "Governing body" means the governing body of the
5 city. (V.A.C.S. Art. 1015g-6, Sec. 1.)

6 Sec. 671.002. CREATION OF AUTHORITY. The city by ordinance
7 may create the City of Laredo Port of Entry Authority for the
8 purposes provided by this chapter. (V.A.C.S. Art. 1015g-6, Sec.
9 2(a).)

10 Sec. 671.003. AUTHORITY JURISDICTION. The authority's
11 jurisdiction is coextensive with the area within the boundaries and
12 extraterritorial jurisdiction of the city. (V.A.C.S. Art. 1015g-6,
13 Sec. 2(b).)

14 [Sections 671.004-671.050 reserved for expansion]

15 SUBCHAPTER B. GOVERNING BOARD

16 Sec. 671.051. COMPOSITION OF BOARD. (a) The authority is
17 governed by a board of 11 members appointed by the governing body.

18 (b) Nine members are voting members who must reside in the
19 authority and two members are nonvoting members who must reside in
20 Mexico.

21 (c) The voting board members must include:

22 (1) one representative of United States customs
23 brokers;

24 (2) one representative of freight forwarders;

25 (3) one representative of the transportation
26 industry;

27 (4) one international banker; and

1 (5) one representative of a maquiladora project.
2 (V.A.C.S. Art. 1015g-6, Secs. 3(a), (b).)

3 Sec. 671.052. BOARD TERMS; VACANCY. (a) Board members
4 serve staggered two-year terms, with the terms of five members
5 expiring February 1 of each odd-numbered year and the terms of six
6 members expiring February 1 of each even-numbered year.

7 (b) A vacancy that occurs more than 60 days before the
8 expiration date of a term shall be promptly filled for the unexpired
9 term by the appointment of a member who has the same qualifications
10 as the member creating the vacancy. (V.A.C.S. Art. 1015g-6, Secs.
11 3(c), (e).)

12 Sec. 671.053. OFFICERS. The board shall select from among
13 the board's voting members a presiding officer, an assistant
14 presiding officer, a treasurer, and any other officers that the
15 board considers appropriate. (V.A.C.S. Art. 1015g-6, Sec. 3(d).)

16 Sec. 671.054. REMOVAL. After a hearing, a board member may
17 be removed for cause by a two-thirds vote of the membership of the
18 governing body. (V.A.C.S. Art. 1015g-6, Sec. 3(f).)

19 Sec. 671.055. COMPENSATION; REIMBURSEMENT. A board member
20 serves without compensation but is entitled to reimbursement for
21 necessary expenses incurred in the performance of duties as a
22 member. (V.A.C.S. Art. 1015g-6, Sec. 4.)

23 [Sections 671.056-671.100 reserved for expansion]

24 SUBCHAPTER C. POWERS AND DUTIES

25 Sec. 671.101. FEES. The authority shall establish and
26 collect rentals, tolls, and other appropriate fees:

27 (1) from an operator of a commercial vehicle entering

1 the authority by an international bridge; and

2 (2) for the use of any other facility designated by the
3 city. (V.A.C.S. Art. 1015g-6, Sec. 5(a) (part).)

4 Sec. 671.102. USE OF MONEY. The authority may use the money
5 collected under this chapter as the board determines appropriate
6 only for the development and promotion of international trade. The
7 authority must obtain the approval of the governing body before any
8 expenditure of money. (V.A.C.S. Art. 1015g-6, Sec. 5(b).)

9 Sec. 671.103. EFFECT OF AUTHORITY ACTION; CITY APPROVAL.

10 (a) Not later than the 15th day after the date on which the
11 authority or the board acts, the city may approve or disapprove the
12 action.

13 (b) If the city disapproves an action under Subsection (a),
14 the action has no effect. If the city does not disapprove the
15 action, the action becomes effective on the earlier of:

16 (1) the date on which the city approves the action; or

17 (2) the 15th day after the date on which the authority
18 or board acted. (V.A.C.S. Art. 1015g-6, Sec. 5(c).)

19 Sec. 671.104. AD VALOREM TAXES AND BONDS PROHIBITED. The
20 authority may not:

21 (1) impose an ad valorem tax; or

22 (2) issue bonds. (V.A.C.S. Art. 1015g-6, Sec. 5(a)
23 (part).)

24 Sec. 671.105. DEPOSITORY; ORDER TO DISBURSE. (a) The
25 treasurer of the authority shall deposit money collected by the
26 authority in a separate account in a bank or trust company.

27 (b) Money of the authority may be paid out on the warrant or

1 other order of the presiding officer of the board or another person
2 designated by the authority. (V.A.C.S. Art. 1015g-6, Sec. 6.)

3 Sec. 671.106. AUDIT. (a) At least once a year, the
4 authority shall have a certified public accountant conduct an audit
5 of the authority's books, accounts, and other records. A copy of
6 the audit shall be delivered to the city.

7 (b) If the authority does not have the required audit
8 conducted, an auditor or accountant designated by the city may
9 examine, at the expense of the authority, the accounts and books of
10 the authority, including receipts, disbursements, contracts,
11 leases, investments, and other matters relating to the authority's
12 finances, operation, and affairs. (V.A.C.S. Art. 1015g-6, Sec. 7.)

13 [Chapters 672-680 reserved for expansion]

14 SUBTITLE C. TRADE ZONES

15 CHAPTER 681. FOREIGN TRADE ZONES

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 681.001. DEFINITION

18 Sec. 681.002. AUTHORIZATION SUBJECT TO FEDERAL LAW AND
19 REGULATIONS

20 [Sections 681.003-681.050 reserved for expansion]

21 SUBCHAPTER B. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE
22 ZONES BY CERTAIN ENTITIES

23 Sec. 681.051. DEFINITIONS

24 Sec. 681.052. GENERAL AUTHORITY FOR ELIGIBLE
25 CORPORATION OR GOVERNMENTAL ENTITY

26 [Sections 681.053-681.100 reserved for expansion]

- 1 SUBCHAPTER C. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE
2 ZONES BY CERTAIN JOINT BOARDS
3 Sec. 681.101. DEFINITION
4 Sec. 681.102. GENERAL AUTHORITY FOR JOINT BOARD
5 [Sections 681.103-681.150 reserved for expansion]
6 SUBCHAPTER D. SPECIFIC AUTHORITY FOR CERTAIN FOREIGN TRADE ZONES
7 Sec. 681.151. AMARILLO TRADE ZONE CORPORATION
8 Sec. 681.152. CITY OF AUSTIN OR DESIGNEE
9 Sec. 681.153. CITY OF BEAUMONT; JEFFERSON COUNTY; PORT
10 OF BEAUMONT NAVIGATION DISTRICT; OR
11 CERTAIN OTHER CORPORATIONS OR ENTITIES
12 Sec. 681.154. BRAZOS RIVER HARBOR NAVIGATION DISTRICT
13 OR DESIGNEE
14 Sec. 681.155. BROWNSVILLE NAVIGATION DISTRICT
15 Sec. 681.156. CALHOUN-VICTORIA FOREIGN TRADE ZONE
16 CORPORATION
17 Sec. 681.157. CITY OF CORPUS CHRISTI, PORT OF CORPUS
18 CHRISTI AUTHORITY, OR DESIGNEE
19 Sec. 681.158. CITY OF DEL RIO OR DESIGNEE
20 Sec. 681.159. CITY OF EAGLE PASS OR DESIGNEE
21 Sec. 681.160. CITY OF EL PASO OR EL PASO TRADE ZONE
22 CORPORATION
23 Sec. 681.161. CITY OF GALVESTON OR BOARD OF TRUSTEES
24 OF GALVESTON WHARVES
25 Sec. 681.162. HARLINGEN TRADE ZONE CORPORATION
26 Sec. 681.163. CITY OF HOUSTON, HARRIS COUNTY, OR
27 CERTAIN OTHER CORPORATIONS OR ENTITIES

- 1 Sec. 681.164. CITY OF HOUSTON, PORT OF HOUSTON
2 AUTHORITY, OR HOUSTON FOREIGN-TRADE
3 ZONE CORPORATION
- 4 Sec. 681.165. JEFFERSON COUNTY AIRPORT GOVERNING BODY
- 5 Sec. 681.166. CITY OF LAREDO
- 6 Sec. 681.167. CITY OF LUBBOCK OR DESIGNEE
- 7 Sec. 681.168. MCALLEN TRADE ZONE CORPORATION
- 8 Sec. 681.169. CITY OF MIDLAND OR DESIGNEE
- 9 Sec. 681.170. MIDLOTHIAN TRADE ZONE CORPORATION
- 10 Sec. 681.171. ORANGE COUNTY NAVIGATION AND PORT
11 DISTRICT
- 12 Sec. 681.172. PORT OF PORT ARTHUR NAVIGATION DISTRICT
- 13 Sec. 681.173. SAN ANGELO TRADE ZONE CORPORATION
- 14 Sec. 681.174. CITY OF SAN ANTONIO OR DESIGNEE
- 15 Sec. 681.175. SATURN TRADE ZONE CORPORATION
- 16 Sec. 681.176. STARR COUNTY INDUSTRIAL FOUNDATION
- 17 Sec. 681.177. CITY OF WESLACO OR WESLACO DEVELOPMENT
18 CORPORATION
- 19 Sec. 681.178. WESTPORT ECONOMIC DEVELOPMENT
20 CORPORATION
- 21 CHAPTER 681. FOREIGN TRADE ZONES
22 SUBCHAPTER A. GENERAL PROVISIONS
- 23 Sec. 681.001. DEFINITION. In this chapter, "foreign trade
24 zone" has the meaning assigned to the term "zone" by the Foreign
25 Trade Zones Act (19 U.S.C. Section 81a et seq.). (New.)
- 26 Sec. 681.002. AUTHORIZATION SUBJECT TO FEDERAL LAW AND
27 REGULATIONS. An authorization under this chapter is subject to the

1 requirements of federal law and the regulations of the board
2 established to carry out the provisions of the Foreign Trade Zones
3 Act (19 U.S.C. Section 81a et seq.). (V.A.C.S. Arts. 1446.01, Sec.
4 2 (part); 1446.1 (part); 1446.2 (part); 1446.3 (part); 1446.4, Sec.
5 2 (part); 1446.5 (part); 1446.6 (part); 1446.7 (part); 1446.8, Sec.
6 2 (part); 1446.9 (part); 1446.10, Sec. 1 (part); 1446.11 (part);
7 1446.12 (part); 1446.13 (part); 1446.14 (part); 1446.15, Secs. 1
8 (part), 2 (part), 3 (part), 4 (part); 1446.16 (part); 1446.17
9 (part); 1446.18 (part); 1446.19 (part); 1446.20 (part); 1446.21
10 (part); 1446.22 (part); 1446.23 (part); 1446.24 (part); 1446.25
11 (part); 1446.26, Sec. 1 (part).)

12 [Sections 681.003-681.050 reserved for expansion]

13 SUBCHAPTER B. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE
14 ZONES BY CERTAIN ENTITIES

15 Sec. 681.051. DEFINITIONS. In this subchapter:

16 (1) "Eligible corporation" means a corporation
17 organized to establish, operate, and maintain a foreign trade zone.

18 (2) "Governmental entity" means:

19 (A) this state;

20 (B) a state agency;

21 (C) a county, municipality, or special district;

22 or

23 (D) a combination of entities listed in
24 Paragraphs (A)-(C). (V.A.C.S. Art. 1446.01, Sec. 1.)

25 Sec. 681.052. GENERAL AUTHORITY FOR ELIGIBLE CORPORATION OR
26 GOVERNMENTAL ENTITY. (a) An eligible corporation or a
27 governmental entity may:

1 (1) apply for and accept a grant of authority to
2 establish, operate, and maintain a foreign trade zone and subzones;
3 and

4 (2) take other actions necessary to establish,
5 operate, and maintain the foreign trade zone and subzones.

6 (b) An applicant under Subsection (a) may select and
7 describe the location of the foreign trade zone and subzones.
8 (V.A.C.S. Art. 1446.01, Secs. 2 (part), 3.)

9 [Sections 681.053-681.100 reserved for expansion]

10 SUBCHAPTER C. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE
11 ZONES BY CERTAIN JOINT BOARDS

12 Sec. 681.101. DEFINITION. In this subchapter, "joint board"
13 means a joint board created by two or more municipalities with a
14 combined population of more than one million under:

15 (1) Chapter 114, Acts of the 50th Legislature, Regular
16 Session, 1947; or

17 (2) Section 22.074, Transportation Code. (V.A.C.S.
18 Art. 1446.8, Sec. 1.)

19 Sec. 681.102. GENERAL AUTHORITY FOR JOINT BOARD. (a) A
20 joint board may apply for and accept a permit, license, or other
21 grant of authority to establish, operate, and maintain:

22 (1) one or more foreign trade zones, as Texas ports of
23 entry under federal law, in any county in which the board's airport
24 is located; and

25 (2) other subzones or other additions to an existing
26 zone inside or outside that county.

27 (b) In operating and maintaining a foreign trade zone or

1 subzone under this subchapter, a joint board may exercise any power
2 or authority necessary to establish, operate, and maintain the
3 foreign trade zone or subzone in accordance with federal law,
4 rules, and regulations. (V.A.C.S. Art. 1446.8, Secs. 2 (part), 3.)

5 [Sections 681.103-681.150 reserved for expansion]

6 SUBCHAPTER D. SPECIFIC AUTHORITY FOR CERTAIN FOREIGN TRADE ZONES

7 Sec. 681.151. AMARILLO TRADE ZONE CORPORATION. The Amarillo
8 Trade Zone, Inc., organized under the laws of this state, with
9 offices at or near Amarillo, Potter, and Randall Counties, may
10 apply for and accept a grant of authority to establish, operate, and
11 maintain:

12 (1) a foreign trade zone in Amarillo, Potter, and
13 Randall Counties; and

14 (2) other subzones. (V.A.C.S. Art. 1446.5 (part).)

15 Sec. 681.152. CITY OF AUSTIN OR DESIGNEE. The City of
16 Austin, or a nonprofit corporation organized under the laws of this
17 state and designated by the City of Austin, may apply for and accept
18 a grant of authority to establish, operate, and maintain:

19 (1) a foreign trade zone in Travis County; and

20 (2) other subzones. (V.A.C.S. Art. 1446.25 (part).)

21 Sec. 681.153. CITY OF BEAUMONT; JEFFERSON COUNTY; PORT OF
22 BEAUMONT NAVIGATION DISTRICT; OR CERTAIN OTHER CORPORATIONS OR
23 ENTITIES. (a) This section applies to:

24 (1) the City of Beaumont;

25 (2) the Beaumont Chamber of Commerce;

26 (3) Jefferson County;

27 (4) the Port of Beaumont Navigation District of

1 Jefferson County;

2 (5) the Beaumont Economic Development Foundation, a
3 nonprofit corporation organized under the Texas Non-Profit
4 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil
5 Statutes), with offices at Beaumont, Jefferson County; or

6 (6) any other corporation organized under the laws of
7 this state and designated by the Port of Beaumont Navigation
8 District of Jefferson County.

9 (b) A corporation or entity listed in or described by
10 Subsection (a) may apply for and accept a grant of authority to
11 establish, operate, and maintain a foreign trade zone and subzones
12 in Beaumont, Jefferson County, or another location in the portion
13 of the Port Arthur Customs District located in this state.
14 (V.A.C.S. Art. 1446.15, Sec. 1 (part).)

15 Sec. 681.154. BRAZOS RIVER HARBOR NAVIGATION DISTRICT OR
16 DESIGNEE. The Brazos River Harbor Navigation District of Brazoria
17 County, or a corporation organized under the laws of this state and
18 designated by the Brazos River Harbor Navigation District of
19 Brazoria County, may apply for and accept a grant of authority to
20 establish, operate, and maintain:

21 (1) a foreign trade zone adjacent to a port of entry in
22 the Brazos River Harbor Navigation District of Brazoria County; and

23 (2) other subzones. (V.A.C.S. Art. 1446.18 (part).)

24 Sec. 681.155. BROWNSVILLE NAVIGATION DISTRICT. The
25 Brownsville Navigation District may:

26 (1) apply for and accept a grant of authority to
27 establish, operate, and maintain:

1 (A) a foreign trade zone at the Brownsville port
2 of entry; and

3 (B) subzones of that zone; and

4 (2) on issuance of the grant of authority, take any
5 action necessary or appropriate to establish, operate, or maintain
6 the foreign trade zone and subzones. (V.A.C.S. Art. 1446.11
7 (part).)

8 Sec. 681.156. CALHOUN-VICTORIA FOREIGN TRADE ZONE
9 CORPORATION. The Calhoun-Victoria Foreign Trade Zone, Inc., a
10 corporation organized under the laws of this state, may apply for
11 and accept a grant of authority to establish, operate, and
12 maintain:

13 (1) a foreign trade zone in Calhoun County, Victoria
14 County, or both; and

15 (2) other subzones. (V.A.C.S. Art. 1446.21 (part).)

16 Sec. 681.157. CITY OF CORPUS CHRISTI, PORT OF CORPUS
17 CHRISTI AUTHORITY, OR DESIGNEE. The City of Corpus Christi, the
18 Port of Corpus Christi Authority of Nueces County, or any other
19 approved public agency designated by the City of Corpus Christi or
20 the Port of Corpus Christi Authority of Nueces County may apply for
21 and accept a grant of authority to establish, operate, and maintain
22 a foreign trade zone and subzones. (V.A.C.S. Art. 1446.17 (part).)

23 Sec. 681.158. CITY OF DEL RIO OR DESIGNEE. The City of Del
24 Rio, or a nonprofit corporation organized under the laws of this
25 state and designated by the City of Del Rio, may apply for and
26 accept a grant of authority to establish, operate, and maintain:

27 (1) a foreign trade zone in Del Rio, Val Verde County;

1 and

2 (2) other subzones. (V.A.C.S. Art. 1446.13 (part).)

3 Sec. 681.159. CITY OF EAGLE PASS OR DESIGNEE. The City of
4 Eagle Pass, or a nonprofit corporation organized under the laws of
5 this state and designated by the City of Eagle Pass, may apply for
6 and accept a grant of authority to establish, operate, and
7 maintain:

8 (1) a foreign trade zone in Eagle Pass, Maverick
9 County; and

10 (2) other subzones. (V.A.C.S. Art. 1446.14 (part).)

11 Sec. 681.160. CITY OF EL PASO OR EL PASO TRADE ZONE
12 CORPORATION. The City of El Paso or the El Paso Trade Zone, Inc.,
13 organized under the laws of this state, with offices at or near El
14 Paso, El Paso County, may apply for and accept a grant of authority
15 to establish, operate, and maintain:

16 (1) a foreign trade zone adjacent to any port of entry
17 in El Paso County; and

18 (2) other subzones. (V.A.C.S. Art. 1446.9 (part).)

19 Sec. 681.161. CITY OF GALVESTON OR BOARD OF TRUSTEES OF
20 GALVESTON WHARVES. The City of Galveston or the Board of Trustees
21 of the Galveston Wharves may:

22 (1) apply for and accept a grant of authority to
23 establish, operate, and maintain:

24 (A) a foreign trade zone at the Galveston port of
25 entry; and

26 (B) any subzones of that zone; and

27 (2) on issuance of the grant of authority, take any

1 action necessary or appropriate to establish, operate, and maintain
2 the foreign trade zone and subzones. (V.A.C.S. Art. 1446.6
3 (part).)

4 Sec. 681.162. HARLINGEN TRADE ZONE CORPORATION. The
5 Harlingen Trade Zone, Inc., organized under the laws of this state,
6 with offices at or near Harlingen, Cameron County, may apply for and
7 accept a grant of authority to establish, operate, and maintain:

8 (1) a foreign trade zone adjacent to any port of entry
9 in Cameron County; and

10 (2) other subzones. (V.A.C.S. Art. 1446.3 (part).)

11 Sec. 681.163. CITY OF HOUSTON, HARRIS COUNTY, OR CERTAIN
12 OTHER CORPORATIONS OR ENTITIES. (a) This section applies to:

13 (1) the City of Houston;

14 (2) Harris County;

15 (3) a corporation organized under the laws of this
16 state and designated by the City of Houston or Harris County; or

17 (4) any municipality or county located within five
18 miles of a major space and aeronautics center.

19 (b) To establish, operate, and maintain a space facility to
20 be named "Star Port," a corporation or entity listed in or described
21 by Subsection (a) may apply for and accept a grant of authority to
22 establish, operate, and maintain:

23 (1) a foreign trade zone adjacent to or near a facility
24 of the National Aeronautics and Space Administration in Harris
25 County; and

26 (2) other subzones.

27 (c) The corporation or entity may apply for or adopt any

1 appropriate inducements for the establishment and operation of the
2 foreign trade zone, including any appropriate or applicable tax
3 abatement or tax exemption. (V.A.C.S. Art. 1446.26, Secs. 1
4 (part), 2.)

5 Sec. 681.164. CITY OF HOUSTON, PORT OF HOUSTON AUTHORITY,
6 OR HOUSTON FOREIGN-TRADE ZONE CORPORATION. The City of Houston,
7 the Port of Houston Authority, and the Houston Foreign-Trade Zone,
8 Incorporated, a private corporation organized under the laws of
9 this state, may each:

10 (1) apply for and accept a grant of authority to
11 establish, operate, and maintain:

12 (A) a foreign trade zone at the Houston port of
13 entry; and

14 (B) any subzones of that zone; and

15 (2) if the grant of authority is approved, take any
16 action necessary to establish, operate, and maintain the foreign
17 trade zone. (V.A.C.S. Art. 1446.7 (part).)

18 Sec. 681.165. JEFFERSON COUNTY AIRPORT GOVERNING BODY. The
19 governing body of the Jefferson County Airport may apply for and
20 accept a grant of authority to establish, operate, and maintain:

21 (1) a foreign trade zone in Jefferson County, which
22 may include:

23 (A) land inside the boundaries of the airport;
24 and

25 (B) private industrial land, not to exceed 1,000
26 acres, adjacent to the airport; and

27 (2) other subzones. (V.A.C.S. Art. 1446.15, Sec. 4

1 (part).)

2 Sec. 681.166. CITY OF LAREDO. The City of Laredo or an
3 instrumentality of the City of Laredo may apply for and accept a
4 grant of authority to establish, operate, and maintain:

5 (1) a foreign trade zone at the Laredo port of entry;
6 and

7 (2) other subzones. (V.A.C.S. Art. 1446.1 (part).)

8 Sec. 681.167. CITY OF LUBBOCK OR DESIGNEE. The City of
9 Lubbock, or a corporation organized under the laws of this state and
10 designated by the City of Lubbock, may apply for and accept a grant
11 of authority to establish, operate, and maintain:

12 (1) a foreign trade zone adjacent to the United States
13 Customs port of entry at Lubbock; and

14 (2) other subzones. (V.A.C.S. Art. 1446.22 (part).)

15 Sec. 681.168. MCALLEN TRADE ZONE CORPORATION. The McAllen
16 Trade Zone, Inc., organized under the laws of this state, with
17 offices at McAllen, Hidalgo County, may apply for and accept a grant
18 of authority to establish, operate, and maintain:

19 (1) a foreign trade zone at the McAllen port of entry;
20 and

21 (2) other subzones, one of which may be located in
22 Starr County. (V.A.C.S. Art. 1446.2 (part).)

23 Sec. 681.169. CITY OF MIDLAND OR DESIGNEE. The City of
24 Midland, or a corporation organized under the laws of this state and
25 designated by the City of Midland, may apply for and accept a grant
26 of authority to establish, operate, and maintain:

27 (1) a foreign trade zone adjacent to the Midland

1 Regional Airport; and

2 (2) other subzones. (V.A.C.S. Art. 1446.23 (part).)

3 Sec. 681.170. MIDLOTHIAN TRADE ZONE CORPORATION. The
4 Midlothian Trade Zone Corporation, organized under the laws of this
5 state, may apply for and accept a grant of authority to establish,
6 operate, and maintain:

7 (1) a foreign trade zone in Midlothian, Ellis County,
8 adjacent to the port limits of the Dallas-Fort Worth port of entry;
9 and

10 (2) other subzones in Ellis County. (V.A.C.S. Art.
11 1446.16 (part).)

12 Sec. 681.171. ORANGE COUNTY NAVIGATION AND PORT DISTRICT.
13 The Orange County Navigation and Port District may apply for and
14 accept a grant of authority to establish, operate, and maintain:

15 (1) a foreign trade zone in Orange County; and

16 (2) other subzones. (V.A.C.S. Art. 1446.15, Sec. 2
17 (part).)

18 Sec. 681.172. PORT OF PORT ARTHUR NAVIGATION DISTRICT. The
19 Port of Port Arthur Navigation District of Jefferson County may
20 apply for and accept a grant of authority to establish, operate, and
21 maintain:

22 (1) a foreign trade zone in Jefferson County; and

23 (2) other subzones. (V.A.C.S. Art. 1446.15, Sec. 3
24 (part).)

25 Sec. 681.173. SAN ANGELO TRADE ZONE CORPORATION. The San
26 Angelo Trade Zone, Inc., organized under the laws of this state,
27 with offices at San Angelo, Tom Green County, may apply for and

1 accept a grant of authority to establish, operate, and maintain:

2 (1) a foreign trade zone in San Angelo, Tom Green
3 County;

4 (2) a foreign trade zone at the San Angelo port of
5 entry; and

6 (3) other subzones. (V.A.C.S. Art. 1446.4, Secs. 1, 2
7 (part).)

8 Sec. 681.174. CITY OF SAN ANTONIO OR DESIGNEE. (a) The
9 City of San Antonio, or a nonprofit corporation organized under the
10 laws of this state and designated by the City of San Antonio, may
11 apply for and accept a grant of authority to establish, operate, and
12 maintain:

13 (1) a foreign trade zone at or adjacent to any port of
14 entry in Bexar County; and

15 (2) other subzones.

16 (b) After a nonprofit corporation has accepted a grant of
17 authority to establish, operate, and maintain a foreign trade zone
18 under this section, the City of San Antonio may not exercise any
19 further control or supervision over the corporation with regard to:

20 (1) the naming of directors and officers of the
21 corporation; or

22 (2) the corporation's internal management or
23 organization. (V.A.C.S. Art. 1446.10, Secs. 1 (part), 2.)

24 Sec. 681.175. SATURN TRADE ZONE CORPORATION. The Saturn
25 Trade Zone Corporation, a corporation organized under the laws of
26 this state, may apply for and accept a grant of authority to
27 establish, operate, and maintain:

1 (1) a foreign trade zone at the location designated by
2 General Motors Corporation in this state for the Saturn automobile
3 production facility; and

4 (2) other subzones. (V.A.C.S. Art. 1446.19 (part).)

5 Sec. 681.176. STARR COUNTY INDUSTRIAL FOUNDATION. The
6 Starr County Industrial Foundation, a nonprofit corporation
7 organized under the Texas Non-Profit Corporation Act (Article
8 1396-1.01 et seq., Vernon's Texas Civil Statutes), to promote the
9 economic development of Starr County, with offices at Rio Grande
10 City, Starr County, may apply for and accept a grant of authority to
11 establish, operate, and maintain:

12 (1) a foreign trade zone in Rio Grande City, Starr
13 County; and

14 (2) other subzones. (V.A.C.S. Art. 1446.12 (part).)

15 Sec. 681.177. CITY OF WESLACO OR WESLACO DEVELOPMENT
16 CORPORATION. The City of Weslaco or the Weslaco Development
17 Corporation, Incorporated, a corporation organized under the laws
18 of this state, may apply for and accept a grant of authority to
19 establish, operate, and maintain:

20 (1) a foreign trade zone in Weslaco, Hidalgo County;
21 and

22 (2) other subzones. (V.A.C.S. Art. 1446.20 (part).)

23 Sec. 681.178. WESTPORT ECONOMIC DEVELOPMENT CORPORATION.
24 The Westport Economic Development Corporation, organized as a
25 nonprofit corporation under the laws of this state, with offices at
26 El Paso, El Paso County, may apply for and accept a grant of
27 authority to establish, operate, and maintain:

- 1 (1) a foreign trade zone in or adjacent to the United
2 States Customs port of entry at El Paso, El Paso County; and
3 (2) other subzones. (V.A.C.S. Art. 1446.24 (part).)

4 TITLE 99. MISCELLANEOUS COMMERCIAL PROVISIONS
5 CHAPTER 2001. DESTRUCTION OF DIE, MOLD, OR FORM

6 Sec. 2001.001. DEFINITIONS

7 Sec. 2001.002. NOTICE OF INTENT TO DESTROY DIE, MOLD,
8 OR FORM NOT OWNED BY MOLDER

9 Sec. 2001.003. DESTRUCTION OF DIE, MOLD, OR FORM NOT
10 OWNED BY MOLDER

11 Sec. 2001.004. TITLE EXTINGUISHED ON DESTRUCTION OF
12 DIE, MOLD, OR FORM

13 Sec. 2001.005. LIMITATION ON LIABILITY OF MOLDER

14 Sec. 2001.006. DESTRUCTION OF DIE, MOLD, OR FORM OWNED
15 BY MOLDER

16 CHAPTER 2001. DESTRUCTION OF DIE, MOLD, OR FORM

17 Sec. 2001.001. DEFINITIONS. In this chapter:

18 (1) "Molder" means an individual, firm, or corporation
19 that:

20 (A) makes a die, mold, or form; or

21 (B) uses a die, mold, or form to make another
22 product.

23 (2) "Owner" means an individual, firm, or corporation
24 that holds title to a die, mold, or form. (Bus. & Com. Code, Sec.
25 35.41(a).)

26 Sec. 2001.002. NOTICE OF INTENT TO DESTROY DIE, MOLD, OR
27 FORM NOT OWNED BY MOLDER. (a) After the third anniversary of the

1 date a die, mold, or form was last used or, if the die, mold, or form
2 was never used, after the third anniversary of the date the die,
3 mold, or form was made, a molder that is in possession of the die,
4 mold, or form may send notice to the owner that the molder intends
5 to destroy the die, mold, or form.

6 (b) The notice must be sent by registered mail, return
7 receipt requested, to the last known address of the owner. (Bus. &
8 Com. Code, Sec. 35.41(b).)

9 Sec. 2001.003. DESTRUCTION OF DIE, MOLD, OR FORM NOT OWNED
10 BY MOLDER. A molder that sends a notice in accordance with Section
11 2001.002 may destroy the die, mold, or form if, before the 121st day
12 after the date the owner receives the notice, the owner does not:

- 13 (1) take possession of the die, mold, or form; or
14 (2) make arrangements with the molder for the removal
15 or continued storage of the die, mold, or form. (Bus. & Com. Code,
16 Sec. 35.41(c).)

17 Sec. 2001.004. TITLE EXTINGUISHED ON DESTRUCTION OF DIE,
18 MOLD, OR FORM. Title to a die, mold, or form destroyed in
19 accordance with this chapter is extinguished at the time of the
20 destruction. (Bus. & Com. Code, Sec. 35.41(d).)

21 Sec. 2001.005. LIMITATION ON LIABILITY OF MOLDER. A molder
22 may not be held criminally or civilly liable for destroying a die,
23 mold, or form if the molder complies with Sections 2001.002 and
24 2001.003. (Bus. & Com. Code, Sec. 35.41(e).)

25 Sec. 2001.006. DESTRUCTION OF DIE, MOLD, OR FORM OWNED BY
26 MOLDER. This chapter does not prohibit a molder that is the owner
27 of a die, mold, or form from destroying the die, mold, or form at any

1 time. (Bus. & Com. Code, Sec. 35.41(f).)

2 CHAPTER 2002. LIQUEFIED PETROLEUM GAS CONTAINERS

3 Sec. 2002.001. DEFINITIONS

4 Sec. 2002.002. NOTICE TO PROSPECTIVE PURCHASERS AND USERS

5 Sec. 2002.003. SUPPLY CONTRACT REQUIREMENT

6 Sec. 2002.004. FILLING OR REFILLING OF CONTAINER BY NONOWNER

7 Sec. 2002.005. CRIMINAL PENALTIES

8 CHAPTER 2002. LIQUEFIED PETROLEUM GAS CONTAINERS

9 Sec. 2002.001. DEFINITIONS. In this chapter:

10 (1) "Liquefied petroleum gas" means the hydrocarbon
11 product extracted from natural gas or crude oil and commonly known
12 as butane or propane.

13 (2) "Person" means an individual, association, or
14 corporation. (V.A.C.S. Art. 8610a, Sec. (a).)

15 Sec. 2002.002. NOTICE TO PROSPECTIVE PURCHASERS AND USERS.
16 A person in the business of leasing or selling liquefied petroleum
17 gas containers shall give to each prospective purchaser or user of a
18 container a written notice of the purchase or use options provided
19 by that business, including, as applicable, options to purchase,
20 lease, or lease-purchase. The notice must include a written
21 statement that other persons in the business of leasing or selling
22 liquefied petroleum gas containers may provide purchase or use
23 options that include purchase, lease, and lease-purchase.
24 (V.A.C.S. Art. 8610a, Sec. (b).)

25 Sec. 2002.003. SUPPLY CONTRACT REQUIREMENT. If a person in
26 the business of leasing or selling liquefied petroleum gas
27 containers signs a supply contract with another person, a separate

1 agreement on the face of the supply contract must state that the
2 supplier gave to the user, before the user signed the supply
3 contract, the notice required by Section 2002.002. (V.A.C.S. Art.
4 8610a, Sec. (c).)

5 Sec. 2002.004. FILLING OR REFILLING OF CONTAINER BY
6 NONOWNER. A person who is not the owner of a liquefied petroleum
7 gas container may fill or refill the container if the person who
8 occupies the premises where the container is located:

9 (1) requests the service; and

10 (2) signs a written request stating that:

11 (A) an emergency exists; and

12 (B) the owner is unavailable to fill or refill
13 the container, as applicable. (V.A.C.S. Art. 8610a, Sec. (e).)

14 Sec. 2002.005. CRIMINAL PENALTIES. (a) A person commits an
15 offense if the person knowingly violates this chapter.

16 (b) A person who is not the owner of a liquefied petroleum
17 gas container commits an offense if the person:

18 (1) except as provided by Section 2002.004, without
19 written authorization of the owner of the container sells, fills,
20 refills, delivers or permits to be delivered, or uses the container
21 for any purpose;

22 (2) obtains a written request under Section 2002.004
23 through misrepresentation; or

24 (3) defaces, removes, or conceals a name, mark,
25 initial, or device on the container without the written consent of
26 the owner of the container.

27 (c) An offense under this section is a misdemeanor

1 punishable by a fine of not less than \$25 and not more than \$200.
2 (V.A.C.S. Art. 8610a, Secs. (d), (f), (g); Art. 8611 (part).)

3 SECTION 2.02. CONFORMING AMENDMENT. Section 1.301(c),
4 Business & Commerce Code, is amended to read as follows:

5 (c) If a transaction that is subject to this title is a
6 "qualified transaction," as defined in Section 271.001 [~~35.51 of~~
7 ~~this code~~], then except as provided in Subsection (b) of this
8 section, Chapter 271 [~~Section 35.51~~] governs the effect of an
9 agreement by the parties that the law of a particular jurisdiction
10 governs an issue relating to the transaction or that the law of a
11 particular jurisdiction governs the interpretation or construction
12 of an agreement relating to the transaction or a provision of the
13 agreement.

14 SECTION 2.03. CONFORMING AMENDMENT. Section 2A.104(a),
15 Business & Commerce Code, is amended to read as follows:

16 (a) A lease, although subject to this chapter, is also
17 subject to any applicable:

18 (1) certificate of title statute of this state,
19 including Chapter 501, Transportation Code, Chapter 31, Parks and
20 Wildlife Code, and Subchapter E, Chapter 1201, Occupations Code;

21 (2) certificate of title statute of another
22 jurisdiction (Section 2A.105); or

23 (3) consumer law of this state, both decisional and
24 statutory, including, to the extent that they apply to a lease
25 transaction:

26 (A) Titles 6, 7, 8, 9, and 14;

27 (B) Subtitle A, Title 11;

1 (C) Chapters 17, 53, 54, 72, 92, 101, 103, 305,
2 323, 522, 523, 602, 603, 604, and 2001;

3 (D) Section 65.017, Civil Practice and Remedies
4 Code;

5 (E) Chapter 1201, Occupations Code; and

6 (F) Chapter 25, Transportation Code~~[, Chapters~~
7 ~~17 and 35 of this code and Chapter 1201, Occupations Code].~~

8 SECTION 2.04. CONFORMING AMENDMENT. Section 7.103(d),
9 Business & Commerce Code, is amended to read as follows:

10 (d) To the extent there is a conflict between Chapter 322
11 ~~[43]~~ and this chapter, this chapter governs.

12 SECTION 2.05. CONFORMING AMENDMENT. Section 9.311(a),
13 Business & Commerce Code, is amended to read as follows:

14 (a) Except as otherwise provided in Subsection (d), the
15 filing of a financing statement is not necessary or effective to
16 perfect a security interest in property subject to:

17 (1) a statute, regulation, or treaty of the United
18 States whose requirements for a security interest's obtaining
19 priority over the rights of a lien creditor with respect to the
20 property preempt Section 9.310(a);

21 (2) the following statutes of this state: Chapter
22 501, Transportation Code, relating to the certificates of title
23 for motor vehicles; Subchapter B-1, Chapter 31, Parks and Wildlife
24 Code, relating to the certificates of title for vessels and
25 outboard motors; Chapter 1201, Occupations Code, relating to the
26 documents of title for manufactured homes; or Chapter 261
27 ~~[Subchapter A, Chapter 35]~~, relating to utility security

1 instruments; or

2 (3) a certificate of title statute of another
3 jurisdiction that provides for a security interest to be indicated
4 on the certificate as a condition or result of the security
5 interest's obtaining priority over the rights of a lien creditor
6 with respect to the property.

7 SECTION 2.06. CONFORMING AMENDMENT. Title 2, Agriculture
8 Code, is amended by adding Chapter 17 to read as follows:

9 CHAPTER 17. SALE AND REGULATION OF CERTAIN FUEL MIXTURES

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 17.001. DEFINITIONS. In this chapter:

12 (1) "Automotive fuel rating" has the meaning assigned
13 by 15 U.S.C. Section 2821.

14 (2) "Dealer" means a person who:

15 (A) is the operator of a service station or other
16 retail outlet; and

17 (B) delivers motor fuel into the fuel tanks of
18 motor vehicles or motor boats.

19 (3) "Distributor" has the meaning assigned by Section
20 162.001, Tax Code.

21 (4) "Jobber" means a person who purchases tax-paid
22 gasoline for resale or distribution at wholesale.

23 (5) "Motor fuel" has the meaning assigned by Section
24 162.001, Tax Code.

25 (6) "Supplier" has the meaning assigned by Section
26 162.001, Tax Code.

27 (7) "Wholesaler" means a person who purchases tax-paid

1 gasoline for resale or distribution at wholesale. (V.A.C.S. Art.
2 8614, Secs. 1, 3B (part), 4(a) (part).)

3 [Sections 17.002-17.050 reserved for expansion]

4 SUBCHAPTER B. SALE OR DELIVERY OF MOTOR FUEL

5 Sec. 17.051. NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE.

6 (a) A dealer may not sell or offer for sale motor fuel from a motor
7 fuel pump supplied by a storage tank into which motor fuel, in a
8 mixture in which at least one percent of the mixture measured by
9 volume is ethanol or methanol, has been delivered within the 60-day
10 period preceding the date of sale or offer of sale unless the dealer
11 prominently displays on the pump from which the mixture is sold a
12 sign that complies with Subsection (b).

13 (b) A sign required by Subsection (a) must:

14 (1) be displayed on each face of the motor fuel pump on
15 which the price of the motor fuel mixture sold from the pump is
16 displayed;

17 (2) state "Contains Ethanol" or "Contains Methanol,"
18 as applicable;

19 (3) appear in contrasting colors with block letters at
20 least one-half inch high and one-fourth inch wide; and

21 (4) be displayed in a clear, conspicuous, and
22 prominent manner, visible to customers using either side of the
23 pump.

24 (c) If a motor fuel pump is supplied by a storage tank into
25 which motor fuel containing at least 10 percent ethanol by volume or
26 at least five percent methanol by volume is delivered in the 60-day
27 period preceding the date of the sale or offer of sale, the sign

1 required by Subsection (a) must also state the percentage of
2 ethanol or methanol by volume, to the nearest whole percent, of the
3 motor fuel having the highest percentage of ethanol or methanol
4 delivered into that storage tank during that period.

5 (d) On request by a motor fuel user, a dealer shall reveal:

6 (1) the percentage of ethanol contained in motor fuel
7 being sold;

8 (2) the percentage of methanol contained in motor fuel
9 being sold; and

10 (3) if the motor fuel contains methanol, the types and
11 percentages of associated cosolvents contained in the motor fuel
12 being sold.

13 (e) This section does not prohibit the posting of any other
14 alcohol or additive information. Other alcohol or additive
15 information and any relevant posting are subject to regulation by
16 the commissioner. (V.A.C.S. Art. 8614, Secs. 3, 4(b).)

17 Sec. 17.052. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES.

18 (a) Except as provided by Subsection (b), a distributor, supplier,
19 wholesaler, or jobber of motor fuel may not deliver to an outlet in
20 this state a motor fuel mixture that contains ethanol or methanol
21 exceeding one percent by volume of the mixture unless, at the time
22 of the delivery of the mixture, the person also delivers to the
23 outlet receiving the delivery:

24 (1) signs required by Section 17.051 in a number
25 sufficient for the dealer receiving the mixture to comply with that
26 section; and

27 (2) a manifest, bill of sale, bill of lading, or other

1 document evidencing delivery of the mixture, that:

2 (A) includes a statement containing:

3 (i) the percentage of ethanol or methanol
4 contained in the mixture; and

5 (ii) the types and percentages of any
6 associated cosolvents contained in the mixture; and

7 (B) evidences delivery of the signs required
8 under Subdivision (1).

9 (b) Subsection (a) does not apply to a delivery made into
10 the fuel supply tanks of a motor vehicle.

11 (c) The commissioner by rule may prescribe the form of the
12 statement required by Subsection (a). (V.A.C.S. Art. 8614, Secs.
13 4(a) (part), (c).)

14 Sec. 17.053. RECORD OF DELIVERY DOCUMENTS; INSPECTION
15 AUTHORIZED. (a) Each dealer shall keep a copy of each document
16 required to be delivered to the dealer by Section 17.052 until the
17 first anniversary of the delivery date. During the first 60 days
18 following delivery of a fuel mixture subject to this chapter, the
19 dealer shall keep a copy at the station or retail outlet where the
20 motor fuel was delivered.

21 (b) Each distributor, supplier, wholesaler, and jobber of
22 motor fuel shall keep at the person's principal place of business a
23 copy of each document required to be delivered to the dealer by
24 Section 17.052 until the first anniversary of the delivery date.

25 (c) The commissioner or an authorized representative of the
26 commissioner may inspect documents described by this section.

27 (d) The commissioner by rule may prescribe:

1 (1) the manner of filing documents required to be kept
2 under this section; and

3 (2) the time, place, and manner of inspection of the
4 documents. (V.A.C.S. Art. 8614, Sec. 5.)

5 Sec. 17.054. DOCUMENTS RELATING TO POSTING OR CERTIFICATION
6 OF AUTOMOTIVE FUEL RATINGS. (a) Each dealer shall keep for at
7 least one year a copy of:

8 (1) each delivery ticket or letter of certification on
9 which the dealer based a posting of the automotive fuel rating of
10 motor fuel contained in a motor fuel pump;

11 (2) each delivery ticket or letter of certification
12 that is required to be delivered to the dealer under 16 C.F.R. Part
13 306; and

14 (3) records of any automotive fuel rating
15 determination made by the dealer under 16 C.F.R. Part 306.

16 (b) Each distributor or supplier shall keep for at least one
17 year at the distributor's or supplier's principal place of business
18 a copy of each delivery ticket or letter of certification required
19 to be delivered by the distributor or supplier to a dealer in this
20 state under 16 C.F.R. Part 306.

21 (c) The commissioner or an authorized representative of the
22 commissioner may inspect a document required to be kept under this
23 section. (V.A.C.S. Art. 8614, Sec. 5A.)

24 Sec. 17.055. SALE OF MOTOR FUEL WITH INACCURATE AUTOMOTIVE
25 FUEL RATING. (a) A dealer may not sell or offer for sale from a
26 motor fuel pump motor fuel that has an automotive fuel rating lower
27 than the rating for that motor fuel posted on the pump.

1 (b) A distributor or supplier of motor fuel may not deliver
2 or transfer to a dealer in this state motor fuel that has an
3 automotive fuel rating lower than the certification of the rating
4 the distributor or supplier is required to make to the dealer under
5 federal law. (V.A.C.S. Art. 8614, Secs. 3A, 3B.)

6 [Sections 17.056-17.100 reserved for expansion]

7 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

8 Sec. 17.101. COPIES OF DOCUMENTS; DELIVERY TO FEDERAL
9 GOVERNMENT. (a) The commissioner, an authorized representative of
10 the commissioner, or the attorney general may copy any manifest,
11 bill of sale, bill of lading, delivery ticket, letter of
12 certification, or other document that the commissioner or attorney
13 general is entitled to inspect under this chapter.

14 (b) The commissioner, an authorized representative of the
15 commissioner, or the attorney general may deliver a copy of a
16 document described by Subsection (a) to the federal government for
17 the purpose of prosecuting a person for a violation of federal law
18 relating to the sale or transfer of motor fuel. (V.A.C.S. Art.
19 8614, Sec. 11.)

20 Sec. 17.102. TESTING; RULES RELATING TO TESTING FREQUENCY.
21 To determine compliance with the standards and enforce rules
22 adopted under Sections 17.051, 17.052, 17.053, 17.055, and 17.103,
23 the commissioner or an authorized representative of the
24 commissioner may test any motor fuel sold in this state, regardless
25 of the existence of a complaint about the fuel. This section does
26 not prohibit the commissioner from adopting rules relating to the
27 frequency of testing motor fuels. In adopting the rules, the

1 commissioner shall consider:

2 (1) the nature of the violation;

3 (2) the history of past violations; and

4 (3) available funds under Section 17.104(d).

5 (V.A.C.S. Art. 8614, Sec. 2.)

6 Sec. 17.103. AUTHORITY OF COMMISSIONER TO LIMIT
7 APPLICABILITY OF LAW. If the commissioner determines that certain
8 types of motor fuel, such as diesel or liquefied petroleum gas, are
9 not sold in this state as mixtures with alcohol in sufficient
10 quantities to warrant regulation of deliveries of those types of
11 motor fuel under this chapter, the commissioner may limit the
12 application of Sections 17.051 and 17.052 to motor fuels sold in
13 sufficient quantity to warrant regulation. (V.A.C.S. Art. 8614,
14 Sec. 4(d).)

15 Sec. 17.104. RULES; FEES. (a) The commissioner may adopt
16 rules consistent with this chapter for the regulation of the sale of
17 motor fuels containing ethanol and methanol.

18 (b) The commissioner by rule may impose a fee for testing,
19 inspection, or the performance of other services provided as
20 determined necessary by the commissioner in the administration of
21 this chapter. A fee imposed under this subsection shall be
22 collected from each dealer on a periodic basis determined by the
23 commissioner without regard to whether the motor fuel is subject to
24 regulation under this chapter.

25 (c) The commissioner by rule shall prescribe the form for
26 reporting and remitting the fees imposed under this section.

27 (d) Fees collected under this section may be used only to

1 administer and enforce this chapter. (V.A.C.S. Art. 8614, Secs.
2 9(a), (b), (e).)

3 [Sections 17.105-17.150 reserved for expansion]

4 SUBCHAPTER D. ENFORCEMENT

5 Sec. 17.151. CONTRACT FOR ENFORCEMENT. The commissioner
6 may contract for the enforcement of this chapter after due notice.
7 (V.A.C.S. Art. 8614, Sec. 10.)

8 Sec. 17.152. CIVIL ACTION. (a) If a dealer or a
9 distributor, supplier, wholesaler, or jobber of motor fuel violates
10 Section 17.051, 17.052, 17.053, 17.054, or 17.055, a motor fuel
11 user who purchased the motor fuel and sustained damages or who has a
12 complaint about the product may bring an action against the dealer,
13 distributor, supplier, wholesaler, or jobber.

14 (b) The action may be brought, without regard to the
15 specific amount of damages, in the district court in any county in
16 which:

17 (1) the dealer, distributor, supplier, wholesaler, or
18 jobber transacts business; or

19 (2) the dealer resides.

20 (c) The court shall award to a motor fuel user who prevails
21 in an action under this section:

22 (1) the amount of actual damages;

23 (2) equitable relief as determined by the court to be
24 necessary to remedy the effects of the violation, including a
25 declaratory judgment, permanent injunctive relief, and temporary
26 injunctive relief; and

27 (3) court costs and attorney's fees that are

1 reasonable in relation to the amount of work expended.

2 (d) In addition to the remedies provided under Subsection
3 (c), on finding that the defendant wilfully or knowingly violated
4 Section 17.051, 17.052, or 17.053, the trier of fact shall award not
5 more than three times the amount of actual damages.

6 (e) A violation of Section 17.051, 17.052, 17.053, 17.054,
7 or 17.055 also constitutes a deceptive trade practice under
8 Subchapter E, Chapter 17, Business & Commerce Code.

9 (f) An action alleging a violation of Section 17.051,
10 17.052, 17.053, 17.054, or 17.055 must be commenced and prosecuted
11 not later than the second anniversary of the date on which the cause
12 of action accrues. (V.A.C.S. Art. 8614, Sec. 6.)

13 Sec. 17.153. CIVIL PENALTY. A dealer, distributor,
14 supplier, wholesaler, or jobber who violates Section 17.051,
15 17.052, 17.053, 17.054, or 17.055 is liable to this state for a
16 civil penalty of not less than \$200 and not more than \$10,000.
17 (V.A.C.S. Art. 8614, Sec. 7.)

18 Sec. 17.154. CRIMINAL OFFENSES. (a) A person commits an
19 offense if the person knowingly violates Section 17.051, 17.052,
20 17.053, 17.054, or 17.055 or a rule adopted by the commissioner to
21 enforce or implement those sections.

22 (b) A person commits an offense if the person knowingly:

23 (1) refuses to permit a person authorized by Section
24 17.102 to test any motor fuel sold or held for sale in this state;

25 (2) refuses to permit inspection of any document
26 required to be kept or delivered by this chapter on request of a
27 person authorized to inspect the documents under Section 17.053 or

1 17.054; or

2 (3) mutilates, destroys, secretes, forges, or
3 falsifies any document, record, report, or sign required to be
4 delivered, kept, filed, or posted by this chapter or any rule
5 adopted by the commissioner to enforce this chapter.

6 (c) An offense under Subsection (a) is a Class C
7 misdemeanor.

8 (d) An offense under Subsection (b) is a Class B
9 misdemeanor.

10 (e) The commissioner or the authorized representative of
11 the commissioner may request the appropriate prosecuting attorney
12 to prosecute a violation of this chapter. (V.A.C.S. Art. 8614, Sec.
13 8.)

14 Sec. 17.155. ADMINISTRATIVE PENALTY. (a) The commissioner
15 may impose an administrative penalty against a person regulated
16 under this chapter who violates this chapter or a rule or order
17 adopted under this chapter. Except as otherwise provided by this
18 section, an administrative penalty is imposed and collected in the
19 manner provided by Section 12.020.

20 (b) The penalty for a violation of this chapter or a rule or
21 order adopted under this chapter may not exceed \$500 a day for each
22 violation. Each day a violation continues or occurs may be
23 considered a separate violation for purposes of imposing a penalty.

24 (c) The amount of the penalty shall be based on:

25 (1) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of any prohibited acts,
27 and the hazard or potential hazard created to the health, safety, or

1 economic welfare of the public;

2 (2) the economic harm to property or the environment
3 caused by the violation;

4 (3) the history of previous violations;

5 (4) the amount necessary to deter future violations;

6 (5) efforts to correct the violation; and

7 (6) any other matter that justice may require.

8 (d) An employee of the department designated by the
9 commissioner to act under this section who determines that a
10 violation has occurred may issue to the commissioner a report
11 stating the facts on which the determination is based and the
12 designated employee's recommendation on the imposition of a
13 penalty, including a recommendation on the amount of the penalty.

14 (e) Not later than the 14th day after the date the report is
15 issued, the designated employee shall give written notice of the
16 report to the person charged with the violation. The notice may be
17 given by certified mail. The notice must:

18 (1) include a brief summary of the alleged violation;

19 (2) include a statement of the amount of the
20 recommended penalty; and

21 (3) inform the person charged that the person has a
22 right to a hearing on the occurrence of the violation, the amount of
23 the penalty, or both the occurrence of the violation and the amount
24 of the penalty.

25 (f) Not later than the 20th day after the date the person
26 charged receives the notice, the person:

27 (1) in writing may accept the determination and

1 recommended penalty of the designated employee; or

2 (2) may make a written request for a hearing on the
3 occurrence of the violation, the amount of the penalty, or both the
4 occurrence of the violation and the amount of the penalty.

5 (g) If the person charged with the violation accepts the
6 determination and recommended penalty of the designated employee,
7 the commissioner by order shall approve the determination and
8 impose the recommended penalty.

9 (h) If the person charged requests a hearing or fails to
10 respond timely to the notice, the designated employee shall set a
11 hearing and give notice of the hearing to the person. The hearing
12 shall be held by an administrative law judge of the State Office of
13 Administrative Hearings. The administrative law judge shall make
14 findings of fact and conclusions of law and promptly issue to the
15 commissioner a proposal for a decision as to the occurrence of the
16 violation and the amount of a proposed penalty. Based on the
17 findings of fact, conclusions of law, and proposal for a decision,
18 the commissioner by order may find a violation has occurred and
19 impose a penalty or may find that no violation has occurred.

20 (i) The notice of the commissioner's order under Chapter
21 2001, Government Code, given to the person charged with the
22 violation must include a statement of the right of the person to
23 judicial review of the order. (V.A.C.S. Art. 8614, Secs. 7A(a),
24 (b), (c), (d), (e), (f), (g), (h), (i).)

25 SECTION 2.07. CONFORMING AMENDMENT. Section 1.002(4),
26 Business Organizations Code, is amended to read as follows:

27 (4) "Assumed name" means a name adopted for use by a

1 person. The term includes an assumed name filed under Chapter 71
2 [~~36~~], Business & Commerce Code.

3 SECTION 2.08. CONFORMING AMENDMENT. Section 5.001(a),
4 Business Organizations Code, is amended to read as follows:

5 (a) The filing of a certificate of formation by a filing
6 entity under this code, an application for registration by a
7 foreign filing entity under this code, or an application for
8 reservation or registration of a name under this chapter does not
9 authorize the use of a name in this state in violation of a right of
10 another under:

11 (1) the Trademark Act of 1946, as amended (15 U.S.C.
12 Section 1051 et seq.);

13 (2) Chapter 16 or 71 [~~36~~], Business & Commerce Code; or

14 (3) common law.

15 SECTION 2.09. CONFORMING AMENDMENT. Section 5.051,
16 Business Organizations Code, is amended to read as follows:

17 Sec. 5.051. ASSUMED NAME. A domestic entity or a foreign
18 entity having authority to transact business in this state may
19 transact business under an assumed name by filing an assumed name
20 certificate in accordance with Chapter 71 [~~36~~], Business & Commerce
21 Code. The requirements of this subchapter do not apply to an
22 assumed name set forth in an assumed name certificate filed under
23 that chapter.

24 SECTION 2.10. CONFORMING AMENDMENT. Section 15.020(d),
25 Civil Practice and Remedies Code, is amended to read as follows:

26 (d) This section does not apply to an action if:

27 (1) the agreement described by this section was

1 unconscionable at the time that it was made;

2 (2) the agreement regarding venue is voidable under
3 Chapter 272 [Section 35.52], Business & Commerce Code; or

4 (3) venue is established under a statute of this state
5 other than this title.

6 SECTION 2.11. CONFORMING AMENDMENT. Subtitle C, Title 2,
7 Civil Practice and Remedies Code, is amended by adding Chapter 43 to
8 read as follows:

9 CHAPTER 43. PRINCIPAL AND SURETY

10 Sec. 43.001. DEFINITION. In this chapter, "surety"
11 includes:

12 (1) an endorser, a guarantor, and a drawer of a draft
13 that has been accepted; and

14 (2) every other form of suretyship, whether created by
15 express contract or by operation of law. (Bus. & Com. Code, Sec.
16 34.01.)

17 Sec. 43.002. SUIT ON ACCRUED RIGHT OF ACTION. (a) When a
18 right of action accrues on a contract for the payment of money or
19 performance of an act, a surety on the contract may, by written
20 notice, require the obligee to without delay bring a suit on the
21 contract.

22 (b) A surety who provides notice to an obligee under
23 Subsection (a) is discharged from all liability on the contract if
24 the obligee:

25 (1) is not under a legal disability; and

26 (2) does not:

27 (A) bring a suit on the contract during:

1 (i) the first term of court after receipt of
2 the notice; or

3 (ii) the second term of court if good cause
4 is shown for the delay; or

5 (B) prosecute the suit to judgment and execution.
6 (Bus. & Com. Code, Sec. 34.02.)

7 Sec. 43.003. PRIORITY OF EXECUTION. (a) If a judgment
8 granted against two or more defendants finds a suretyship
9 relationship between or among the defendants, the court shall order
10 the sheriff to levy the execution in the following order:

11 (1) against the principal's property located in the
12 county where the judgment was granted;

13 (2) if the sheriff cannot find enough of the
14 principal's property in that county to satisfy the execution,
15 against as much of the principal's property as the sheriff finds;
16 and

17 (3) against as much of the surety's property as is
18 necessary to make up the balance of the amount shown in the writ of
19 execution.

20 (b) The clerk shall note the order to the sheriff on the writ
21 of execution. (Bus. & Com. Code, Sec. 34.03.)

22 Sec. 43.004. SUBROGATION RIGHTS OF SURETY. (a) A judgment
23 is not discharged by a surety's payment of the judgment in whole or
24 part if the payment:

25 (1) is compelled; or

26 (2) if made voluntarily, is applied to the judgment
27 because of the suretyship relationship.

1 (b) A surety who pays on a judgment as described by
2 Subsection (a) is subrogated to all of the judgment creditor's
3 rights under the judgment. A subrogated surety is entitled to
4 execution on the judgment against:

5 (1) the principal's property for the amount of the
6 surety's payment, plus interest and costs; and

7 (2) if there is more than one surety, both the
8 principal's property and the property of the cosurety or cosureties
9 for the amount by which the surety's payment exceeds the surety's
10 proportionate share of the judgment, plus interest and costs.

11 (c) A subrogated surety seeking execution on the judgment
12 under Subsection (b) shall apply for execution to the clerk or
13 court. The execution shall be levied, collected, and returned as in
14 other cases. (Bus. & Com. Code, Sec. 34.04.)

15 Sec. 43.005. OFFICER TREATED AS SURETY. (a) An officer has
16 the rights of a surety provided by Section 43.004 if the officer is
17 compelled to pay a judgment in whole or part because of the
18 officer's default.

19 (b) An officer does not have the rights of a surety provided
20 by Section 43.004 if the officer:

21 (1) does not pay over money collected; or

22 (2) wastes property that is levied on by the officer or
23 is in the officer's possession. (Bus. & Com. Code, Sec. 34.05.)

24 SECTION 2.12. CONFORMING AMENDMENT. Subchapter B, Chapter
25 65, Civil Practice and Remedies Code, is amended by adding Section
26 65.017 to read as follows:

27 Sec. 65.017. CIGARETTE SELLER, DISTRIBUTOR, OR

1 MANUFACTURER. In addition to any other remedy provided by law, a
2 person may bring an action in good faith for appropriate injunctive
3 relief if the person sells, distributes, or manufactures cigarettes
4 and sustains a direct economic or commercial injury as a result of a
5 violation of:

6 (1) Section 48.015, Penal Code; or

7 (2) Section 154.0415, Tax Code. (Bus. & Com. Code,
8 Sec. 35.49.)

9 SECTION 2.13. CONFORMING AMENDMENT. Article 18.18(g), Code
10 of Criminal Procedure, is amended to read as follows:

11 (g) For purposes of this article:

12 (1) "criminal instrument" has the meaning defined in
13 the Penal Code;

14 (2) "gambling device or equipment, altered gambling
15 equipment or gambling paraphernalia" has the meaning defined in the
16 Penal Code;

17 (3) "prohibited weapon" has the meaning defined in the
18 Penal Code;

19 (4) "dog-fighting equipment" means:

20 (A) equipment used for training or handling a
21 fighting dog, including a harness, treadmill, cage, decoy, pen,
22 house for keeping a fighting dog, feeding apparatus, or training
23 pen;

24 (B) equipment used for transporting a fighting
25 dog, including any automobile, or other vehicle, and its
26 appurtenances which are intended to be used as a vehicle for
27 transporting a fighting dog;

1 (C) equipment used to promote or advertise an
2 exhibition of dog fighting, including a printing press or similar
3 equipment, paper, ink, or photography equipment; or

4 (D) a dog trained, being trained, or intended to
5 be used to fight with another dog;

6 (5) "obscene device" and "obscene" have the meanings
7 assigned by Section 43.21, Penal Code;

8 (6) "re-encoder" has the meaning assigned by Section
9 522.001 [~~35.60~~], Business & Commerce Code;

10 (7) "scanning device" has the meaning assigned by
11 Section 522.001 [~~35.60~~], Business & Commerce Code; and

12 (8) "obscene material" and "child pornography"
13 include digital images and the media and equipment on which those
14 images are stored.

15 SECTION 2.14. CONFORMING AMENDMENT. Article 59.01(2), Code
16 of Criminal Procedure, is amended to read as follows:

17 (2) "Contraband" means property of any nature,
18 including real, personal, tangible, or intangible, that is:

19 (A) used in the commission of:

20 (i) any first or second degree felony under
21 the Penal Code;

22 (ii) any felony under Section 15.031(b),
23 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
24 31, 32, 33, 33A, or 35, Penal Code;

25 (iii) any felony under The Securities Act
26 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

27 (iv) any offense under Chapter 49, Penal

1 Code, that is punishable as a felony of the third degree or state
2 jail felony, if the defendant has been previously convicted three
3 times of an offense under that chapter;

4 (B) used or intended to be used in the commission
5 of:

6 (i) any felony under Chapter 481, Health
7 and Safety Code (Texas Controlled Substances Act);

8 (ii) any felony under Chapter 483, Health
9 and Safety Code;

10 (iii) a felony under Chapter 153, Finance
11 Code;

12 (iv) any felony under Chapter 34, Penal
13 Code;

14 (v) a Class A misdemeanor under Subchapter
15 B, Chapter 365, Health and Safety Code, if the defendant has been
16 previously convicted twice of an offense under that subchapter;

17 (vi) any felony under Chapter 152, Finance
18 Code;

19 (vii) any felony under Chapter 31, 32, or
20 37, Penal Code, that involves the state Medicaid program, or any
21 felony under Chapter 36, Human Resources Code; or

22 (viii) a Class B misdemeanor under Chapter
23 522 [~~Section 35.60~~], Business & Commerce Code;

24 (C) the proceeds gained from the commission of a
25 felony listed in Paragraph (A) or (B) of this subdivision, a
26 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a
27 crime of violence;

1 (D) acquired with proceeds gained from the
2 commission of a felony listed in Paragraph (A) or (B) of this
3 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this
4 subdivision, or a crime of violence; or

5 (E) used to facilitate or intended to be used to
6 facilitate the commission of a felony under Section 15.031 or
7 43.25, Penal Code.

8 SECTION 2.15. CONFORMING AMENDMENT. Section 14.107(a),
9 Finance Code, is amended to read as follows:

10 (a) The finance commission shall establish reasonable and
11 necessary fees for carrying out the commissioner's powers and
12 duties under this chapter, Title 4, and Chapters 371, 392, and 394
13 and under Chapters 51, 302, 601, and 621 [~~38-41~~], Business &
14 Commerce Code.

15 SECTION 2.16. CONFORMING AMENDMENT. Section 303.301,
16 Finance Code, is amended to read as follows:

17 Sec. 303.301. AGREEMENT TO WHICH CHAPTER DOES NOT APPLY.
18 The rate ceilings provided by this chapter do not apply to an
19 agreement:

20 (1) under which credit is extended by the seller, or an
21 owner, subsidiary, or corporate affiliate of the seller, for a
22 transaction governed by Chapter 601 [~~39~~], Business & Commerce Code;
23 and

24 (2) that is secured by a lien on the obligor's
25 homestead.

26 SECTION 2.17. CONFORMING AMENDMENT. Section 345.001(6),
27 Finance Code, is amended to read as follows:

1 (6) "Retail installment contract" means one or more
2 instruments entered into in this state that evidence a secured or
3 unsecured retail installment transaction. The term includes a
4 chattel mortgage, security agreement, and conditional sale
5 contract and a document that evidences a bailment or lease
6 described by Section 345.068, but does not include:

7 (A) an instrument that is a retail charge
8 agreement;

9 (B) an instrument reflecting a sale under a
10 retail charge agreement; or

11 (C) a rental-purchase agreement that complies
12 with Chapter 92 [~~Subchapter F, Chapter 35~~], Business & Commerce
13 Code.

14 SECTION 2.18. CONFORMING AMENDMENT. Section 345.158,
15 Finance Code, is amended to read as follows:

16 Sec. 345.158. RETAIL CHARGE AGREEMENT TO WHICH SUBCHAPTER
17 DOES NOT APPLY. This subchapter does not apply to a retail charge
18 agreement that:

19 (1) is a home solicitation transaction that is subject
20 to Chapter 601 [~~39~~], Business & Commerce Code;

21 (2) is secured by a lien on the obligor's homestead;
22 and

23 (3) provides for credit that is extended by the retail
24 seller or the seller's owner, subsidiary, or corporate affiliate.

25 SECTION 2.19. CONFORMING AMENDMENT. Section 371.301,
26 Finance Code, is amended to read as follows:

27 Sec. 371.301. COMMISSIONER'S ENFORCEMENT POWERS. For

1 purposes of enforcing this chapter, the commissioner:

2 (1) has the powers granted to the commissioner under
3 Chapter 14;

4 (2) may exercise those powers in the same manner as
5 those powers may be exercised under:

6 (A) Chapters 14, 392, and 394;

7 (B) Subtitle B, Title 4; and

8 (C) Chapters 51, 302, 601, and 621 [~~38-41~~],
9 Business & Commerce Code; and

10 (3) has any authority granted the commissioner by
11 other law.

12 SECTION 2.20. CONFORMING AMENDMENT. Section 552.141,
13 Government Code, as added by Chapter 401, Acts of the 78th
14 Legislature, Regular Session, 2003, is amended to read as follows:

15 Sec. 552.141. EXCEPTION: TEXAS NO-CALL LIST. The Texas
16 no-call list created under Subchapter B [~~C~~], Chapter 304 [~~44~~],
17 Business & Commerce Code, and any information provided to or
18 received from the administrator of the national do-not-call
19 registry maintained by the United States government, as provided by
20 Sections 304.051 and 304.056 [~~Section 44.101~~], Business & Commerce
21 Code, are [~~is~~] excepted from the requirements of Section 552.021.

22 SECTION 2.21. CONFORMING AMENDMENT. Section 982.304,
23 Insurance Code, is amended to read as follows:

24 Sec. 982.304. SAME OR DECEPTIVELY SIMILAR NAME. A foreign
25 or alien insurance company may not be denied permission to engage in
26 the business of insurance in this state because the name of the
27 company is the same as or deceptively similar to the name of a

1 domestic corporation existing under the laws of this state or of
2 another foreign or alien insurance company authorized to engage in
3 the business of insurance in this state if the company desiring to
4 engage in the business of insurance in this state:

5 (1) files with the department and with any county
6 clerk as provided by Subchapter B or C, Chapter 71 [~~Section 36.10 or~~
7 ~~36.11~~], Business & Commerce Code, an assumed name certificate
8 stating a name permitted under the laws of this state; and

9 (2) does not engage in any business in this state
10 except under the assumed name.

11 SECTION 2.22. CONFORMING AMENDMENT. Section 2701.002,
12 Insurance Code, is amended to read as follows:

13 Sec. 2701.002. CONSTRUCTION OF CHAPTER 601 [~~39~~], BUSINESS &
14 COMMERCE CODE. Chapter 601 [~~39~~], Business & Commerce Code, is a
15 consumer protection law when construed in connection with a title
16 insurance policy issued in this state.

17 SECTION 2.23. CONFORMING AMENDMENT. Section 191.009(c),
18 Local Government Code, is amended to read as follows:

19 (c) For purposes of this section:

20 (1) an instrument is an electronic record, as defined
21 by Section 322.002 [~~43.002~~], Business & Commerce Code; and

22 (2) "electronic document" has the meaning assigned by
23 Section 15.002, Property Code.

24 SECTION 2.24. CONFORMING AMENDMENT. Section 195.002(e),
25 Local Government Code, is amended to read as follows:

26 (e) Notwithstanding Sections 322.017 and 322.018 [~~43.017~~
27 ~~and 43.018~~], Business & Commerce Code, a county clerk may accept any

1 filed electronic record, as defined by Section 322.002 [~~43.002~~],
2 Business & Commerce Code, or electronic document and may
3 electronically record that electronic document or record if the
4 filing and recording of that electronic document or record complies
5 with rules adopted by the commission under this section.

6 SECTION 2.25. CONFORMING AMENDMENT. Section 212.158, Local
7 Government Code, is amended to read as follows:

8 Sec. 212.158. EFFECT ON OTHER LAW. This subchapter does not
9 prohibit the exhibition, play, or necessary incidental action
10 thereto of a sweepstakes not prohibited by Chapter 622 [~~43~~],
11 Business & Commerce Code[, ~~as added by Chapter 1119, Acts of the~~
12 ~~77th Legislature, Regular Session, 2001~~].

13 SECTION 2.26. CONFORMING AMENDMENT. Article 8611, Revised
14 Statutes, is amended to read as follows:

15 Art. 8611. PUNISHMENT. Any person who shall knowingly
16 violate any of the provisions of Articles 8601 through and
17 inclusive of Article 8610 [~~8610a~~], Revised Statutes, shall be
18 guilty of a misdemeanor, and upon conviction shall be fined in a sum
19 not less than Twenty-five Dollars (\$25) nor more than Two Hundred
20 Dollars (\$200).

21 SECTION 2.27. CONFORMING AMENDMENT. Section 1101.0055,
22 Occupations Code, is amended to read as follows:

23 Sec. 1101.0055. NONAPPLICABILITY OF LAW GOVERNING
24 CANCELLATION OF CERTAIN TRANSACTIONS. A service contract that a
25 license holder enters into for services governed by this chapter is
26 not a good or service governed by Chapter 601 [~~39~~], Business &
27 Commerce Code.

1 SECTION 2.28. CONFORMING AMENDMENT. Section 1303.0035,
2 Occupations Code, is amended to read as follows:

3 Sec. 1303.0035. NONAPPLICABILITY OF LAW GOVERNING
4 CANCELLATION OF CERTAIN TRANSACTIONS. The sale of a residential
5 service contract governed by this chapter is not a good or service
6 governed by Chapter 601 [~~39~~], Business & Commerce Code.

7 SECTION 2.29. CONFORMING AMENDMENT. Section 1951.254(f),
8 Occupations Code, is amended to read as follows:

9 (f) The information sheet must include:

10 (1) the names and telephone numbers of the board, the
11 Department of Agriculture, and the [~~Texas~~] Department of State
12 Health Services;

13 (2) the telephone number of any pesticide hotline
14 established by a state or federal agency or by a state university;

15 (3) a statement of a consumer's rights under Chapter
16 601 [~~39~~], Business & Commerce Code, to cancel a home solicitation
17 transaction; and

18 (4) information concerning the availability of any
19 pretreatment inspection service that may be provided by the board
20 under Section 1951.210.

21 SECTION 2.30. CONFORMING AMENDMENT. Section 2102.002,
22 Occupations Code, is amended to read as follows:

23 Sec. 2102.002. APPLICATION OF CHAPTER. This chapter does
24 not apply to:

25 (1) a contract:

26 (A) between a performing rights society and a
27 broadcaster licensed by the Federal Communications Commission; or

1 (B) with a cable operator, programmer, or other
2 transmission service;

3 (2) conduct engaged in for the enforcement of Section
4 641.054 and, to the extent applicable, Section 641.056 [35.94],
5 Business & Commerce Code; or

6 (3) the owner of a copyright of a motion picture or an
7 audiovisual work.

8 SECTION 2.31. CONFORMING AMENDMENT. Chapter 2301,
9 Occupations Code, is amended by adding Subchapter R to read as
10 follows:

11 SUBCHAPTER R. REGULATION OF CERTAIN COMMERCIAL USES OF MOTOR
12 VEHICLES

13 Sec. 2301.851. CERTAIN CHARGES INCLUDED IN CUSTOMER
14 AGREEMENT. (a) A person required to register under Section
15 152.065, Tax Code, may include in a customer agreement subject to
16 Subsection (b) a separate charge for the proportionate amount of
17 title fees, registration fees, and property taxes paid in the
18 preceding calendar year on the person's vehicle fleet.

19 (b) A person who includes the charge must do so:

20 (1) on a nondiscriminatory basis; and

21 (2) in each agreement other than an agreement that is
22 exempt from the tax imposed under Section 152.026, Tax Code.
23 (V.A.C.S. Art. 9026a, Secs. (a), (b).)

24 Sec. 2301.852. USE OR RETENTION OF SALVAGE MOTOR VEHICLE.

25 (a) Notwithstanding Section 2301.002, in this section,
26 "certificate of title," "motor vehicle," and "owner" have the
27 meanings assigned by Section 501.002, Transportation Code.

1 **(b) An owner required to register under Section 152.065, Tax**
2 **Code, may not use or retain for use for a usual commercial purpose**
3 **of the owner a motor vehicle that has been issued a certificate of**
4 **title under Section 501.100, Transportation Code. (V.A.C.S. Art.**
5 **9026b, Secs. (a), (c).)**

6 **Sec. 2301.853. CRIMINAL PENALTY. (a) A person commits an**
7 **offense if the person violates this subchapter.**

8 **(b) An offense under this section is a Class A misdemeanor.**
9 **(V.A.C.S. Art. 9026a, Sec. (c); Art. 9026b, Sec. (b).)**

10 SECTION 2.32. CONFORMING AMENDMENT. Section 11.001(a),
11 Property Code, is amended to read as follows:

12 (a) To be effectively recorded, an instrument relating to
13 real property must be eligible for recording and must be recorded in
14 the county in which a part of the property is located. However, if
15 such an instrument grants a security interest by a utility as
16 defined in Section 261.001 [~~35.01~~], Business & Commerce Code, the
17 instrument may be recorded as required by Sections 261.004 and
18 261.006 [~~Section 35.02~~] of that code, and if such instrument is so
19 recorded, the lien and the secured interest created by such
20 instrument shall be deemed perfected for all purposes.

21 SECTION 2.33. CONFORMING AMENDMENT. Sections 72.1016(a)
22 and (d), Property Code, are amended to read as follows:

23 (a) This section applies to a stored value card, as defined
24 by Section 604.001 [~~35.42(a)~~], Business & Commerce Code, other than
25 a card:

26 (1) to which Chapter 604 [~~Section 35.42~~], Business &
27 Commerce Code, does not apply by operation of Sections

1 604.002(1)(A) and (C) and 604.002(2)-(5) of that code [~~Subsection~~
2 ~~(b) of that section~~]; or

3 (2) that is linked to and draws its value solely from a
4 deposit account subject to Chapter 73.

5 (d) A person may charge a fee against a stored value card as
6 provided by Chapter 604 [~~Section 35.42~~], Business & Commerce Code.
7 A fee may not be charged against a stored value card after the card
8 is presumed abandoned under this section.

9 SECTION 2.34. CONFORMING AMENDMENT. Section 221.024(a),
10 Property Code, is amended to read as follows:

11 (a) The commission may prescribe and publish forms and adopt
12 rules necessary to carry out the provisions of this chapter and may
13 suspend or revoke the registration of any developer, place on
14 probation the registration of a developer that has been suspended
15 or revoked, reprimand a developer, impose an administrative penalty
16 of not more than \$10,000, or take any other disciplinary action
17 authorized by this chapter if, after notice and hearing, the
18 commission determines that a developer has materially violated this
19 chapter, the Deceptive Trade Practices-Consumer Protection Act
20 (Subchapter E, Chapter 17, Business & Commerce Code), or the
21 Contest and Gift Giveaway Act (Chapter 621 [40], Business &
22 Commerce Code).

23 SECTION 2.35. CONFORMING AMENDMENT. Sections 221.031(a)
24 through (d), Property Code, are amended to read as follows:

25 (a) At any time, the commission may request a developer to
26 file for review by the commission any advertisement used in this
27 state by the developer in connection with offering a timeshare

1 interest. The developer shall provide the advertisement not later
2 than the 15th day after the date the commission makes the request.
3 If the commission determines that the advertisement violates this
4 chapter or Chapter 621 [~~40~~], Business & Commerce Code, the
5 commission shall notify the developer in writing, stating the
6 specific grounds for the commission's determination not later than
7 the 15th day after the date the commission makes its determination.
8 The commission may grant the developer provisional approval for the
9 advertisement if the developer agrees to correct the deficiencies
10 identified by the commission. A developer, on its own initiative,
11 may submit any proposed advertisement to the commission for review
12 and approval by the commission.

13 (b) Any advertisement that contains a promotion in
14 connection with the offering of a timeshare interest must comply
15 with Chapter 621 [~~40~~], Business & Commerce Code.

16 (c) As provided by Subsections (d) and (e), an advertisement
17 that contains a promotion in connection with the offering of a
18 timeshare interest must include, in addition to any disclosures
19 required under Chapter 621 [~~40~~], Business & Commerce Code, the
20 following:

21 (1) a statement to the effect that the promotion is
22 intended to solicit purchasers of timeshare interests;

23 (2) if applicable, a statement to the effect that any
24 person whose name is obtained during the promotion may be solicited
25 to purchase a timeshare interest;

26 (3) the full name of the developer of the timeshare
27 property; and

1 (4) if applicable, the full name and address of any
2 marketing company involved in the promotion of the timeshare
3 property, excluding the developer or an affiliate or subsidiary of
4 the developer.

5 (d) An advertisement containing the disclosures required by
6 Chapter 621 [~~40~~], Business & Commerce Code, and Subsection (c) must
7 be provided in writing or electronically:

8 (1) at least once before a scheduled sales
9 presentation; and

10 (2) in a reasonable period before the scheduled sales
11 presentation to ensure that the recipient receives the disclosures
12 before leaving to attend the sales presentation.

13 SECTION 2.36. CONFORMING AMENDMENT. Section 25.07(b), Tax
14 Code, is amended to read as follows:

15 (b) Except as provided by Subsections (b) and (c) of Section
16 11.11 of this code, a leasehold or other possessory interest in
17 exempt property may not be listed if:

18 (1) the property is permanent university fund land;

19 (2) the property is county public school fund
20 agricultural land;

21 (3) the property is a part of a public transportation
22 facility owned by an incorporated city or town and:

23 (A) is an airport passenger terminal building or
24 a building used primarily for maintenance of aircraft or other
25 aircraft services, for aircraft equipment storage, or for air
26 cargo;

27 (B) is an airport fueling system facility;

1 (C) is in a foreign-trade zone:

2 (i) that has been granted to a joint airport
3 board under Subchapter C, Chapter 681, Business & Commerce Code
4 [~~Chapter 129, Acts of the 65th Legislature, Regular Session, 1977~~
5 ~~(Article 1446.8, Vernon's Texas Civil Statutes)~~];

6 (ii) the area of which in the portion of the
7 zone located in the airport operated by the joint airport board does
8 not exceed 2,500 acres; and

9 (iii) that is established and operating
10 pursuant to federal law; or

11 (D)(i) is in a foreign trade zone established
12 pursuant to federal law after June 1, 1991, which operates pursuant
13 to federal law;

14 (ii) is contiguous to or has access via a
15 taxiway to an airport located in two counties, one of which has a
16 population of 500,000 or more according to the federal decennial
17 census most recently preceding the establishment of the foreign
18 trade zone; and

19 (iii) is owned, directly or through a
20 corporation organized under the Development Corporation Act of 1979
21 (Article 5190.6, Vernon's Texas Civil Statutes), by the same
22 incorporated city or town which owns the airport;

23 (4) the interest is in a part of:

24 (A) a park, market, fairground, or similar public
25 facility that is owned by an incorporated city or town; or

26 (B) a convention center, visitor center, sports
27 facility with permanent seating, concert hall, arena, or stadium

1 that is owned by an incorporated city or town as such leasehold or
2 possessory interest serves a governmental, municipal, or public
3 purpose or function when the facility is open to the public,
4 regardless of whether a fee is charged for admission;

5 (5) the interest involves only the right to use the
6 property for grazing or other agricultural purposes;

7 (6) the property is owned by the Texas National
8 Research Laboratory Commission or by a corporation formed by the
9 Texas National Research Laboratory Commission under Section
10 465.008(g), Government Code, and is used or is useful in connection
11 with an eligible undertaking as defined by Section 465.021,
12 Government Code; or

13 (7) the property is:

14 (A) owned by a municipality, a public port, or a
15 navigation district created or operating under Section 59, Article
16 XVI, Texas Constitution, or under a statute enacted under Section
17 59, Article XVI, Texas Constitution; and

18 (B) used as an aid or facility incidental to or
19 useful in the operation or development of a port or waterway or in
20 aid of navigation-related commerce.

21 SECTION 2.37. CONFORMING AMENDMENT. Title 3,
22 Transportation Code, is amended by adding Chapter 25 to read as
23 follows:

24 CHAPTER 25. NOTICE OF CONSTRUCTION OF WIRELESS COMMUNICATION
25 FACILITY

26 Sec. 25.001. DEFINITION. In this chapter, "wireless
27 communication facility" means an equipment enclosure, antenna,

1 antenna support structure, and any associated facility used for
2 receiving or sending a radio frequency, microwave, or other signal
3 for a commercial communications purpose. (Bus. & Com. Code, Sec.
4 35.111.)

5 Sec. 25.002. NOTICE OF CONSTRUCTION. (a) A person
6 proposing to construct a wireless communication facility that is
7 taller than 100 feet shall, not later than the 30th day before the
8 date the construction begins, mail a letter to:

9 (1) any airport located within three miles of the
10 proposed facility location; and

11 (2) the Texas Agricultural Aviation Association.

12 (b) The letter must state:

13 (1) the legal description of the proposed site of
14 construction, including a graphic depiction showing:

15 (A) the location, height, longitude, latitude,
16 pad size, roadway access, and proposed use of the wireless
17 communication facility; and

18 (B) the location of any guy wires;

19 (2) at a minimum, the name, phone number, electronic
20 mail address, if any, and mailing address of the person proposing
21 construction of the wireless communication facility; and

22 (3) a phone number that is operational 24 hours a day,
23 seven days a week, for emergency purposes. (Bus. & Com. Code, Sec.
24 35.112.)

25 Sec. 25.003. INAPPLICABILITY OF CHAPTER. This chapter does
26 not apply to:

27 (1) a structure the main purpose of which is to provide

1 electric service;

2 (2) a wireless communication facility:

3 (A) used by an entity only for internal
4 communications;

5 (B) constructed by a municipality;

6 (C) used for emergency communications; or

7 (D) installed for colocation purposes;

8 (3) a radio or television reception antenna;

9 (4) a satellite or microwave parabolic antenna not
10 used by a wireless communication service provider;

11 (5) a receive-only antenna;

12 (6) an antenna owned and operated by a federally
13 licensed amateur radio station operator;

14 (7) a cable television company facility;

15 (8) a radio or television broadcasting facility; or

16 (9) a colocation antenna. (Bus. & Com. Code, Sec.
17 35.113.)

18 Sec. 25.004. EFFECT ON LOCAL ORDINANCES. This chapter does
19 not preempt a local ordinance regulating a wireless communication
20 facility. (Bus. & Com. Code, Sec. 35.114.)

21 SECTION 2.38. CONFORMING AMENDMENT. Section 21.070(a)(2),
22 Transportation Code, is amended to read as follows:

23 (2) "Wireless communication facility" has the meaning
24 assigned by Section 25.001 [~~35.111, Business & Commerce Code~~].

25 SECTION 2.39. CONFORMING AMENDMENT. Section 51.004(d),
26 Utilities Code, is amended to read as follows:

27 (d) An offer made under Subsection (c) must be made in

1 compliance with Chapter 304 [43], Business & Commerce Code[~~as~~
2 ~~added by Chapter 1429, Acts of the 77th Legislature, Regular~~
3 ~~Session, 2001~~].

4 SECTION 2.40. CONFORMING AMENDMENT. Section 26.027(b),
5 Water Code, as effective on delegation of NPDES permit authority,
6 is amended to read as follows:

7 (b) A person desiring to obtain a permit or to amend a permit
8 shall submit an application to the commission containing all
9 information reasonably required by the commission. The commission
10 shall, at minimum, require an applicant who is an individual to
11 provide:

- 12 (1) the individual's full legal name and date of birth;
13 (2) the street address of the individual's place of
14 residence;
15 (3) the identifying number from the individual's
16 driver's license or personal identification certificate issued by
17 the state or country in which the individual resides;
18 (4) the individual's sex; and
19 (5) any assumed business or professional name of the
20 individual filed under Chapter 71 [36], Business & Commerce Code.

21 SECTION 2.41. CONFORMING AMENDMENT. Section C, Article
22 2.03, Texas Limited Liability Company Act (Article 1528n, Vernon's
23 Texas Civil Statutes), is amended to read as follows:

24 C. The filing of articles of organization under Part Three
25 of this Act or an application to reserve a specified company name
26 under Article 2.04 of this Act, does not authorize the use of
27 limited liability company name in this State in violation of the

1 rights of another under the Federal Trademark Act of 1946 (15
2 U.S.C., Section 1051 et seq.), the Texas trademark law (Chapter 16,
3 Business & Commerce Code), the Assumed Business or Professional
4 Name Act (Chapter 71 [~~36~~], Business & Commerce Code), or the common
5 law.

6 SECTION 2.42. CONFORMING AMENDMENT. Section 9.03(b), Texas
7 Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas
8 Civil Statutes), is amended to read as follows:

9 (b) Unless the partnership conducts business under another
10 name, filing the application with the secretary of state makes it
11 unnecessary to file any other documents under the Assumed Business
12 or Professional Name Act (Chapter 71 [~~36~~], Business & Commerce
13 Code).

14 SECTION 2.43. CONFORMING AMENDMENT. Section C, Article
15 2.05, Texas Business Corporation Act, is amended to read as
16 follows:

17 C. The filing of articles of incorporation under Part Three
18 of this Act, an application to reserve a specified Corporate name
19 under Article 2.06 of this Act, or an application to register a
20 Corporate name by a foreign corporation under Article 2.07 of this
21 Act does not authorize the use of a Corporate name in this State in
22 violation of the rights of another under the federal Trademark Act
23 of 1946 (15 U.S.C., Section 1051 et seq.), the Texas trademark law
24 (Chapter 16, Business & Commerce Code), the Assumed Business or
25 Professional Name Act (Chapter 71 [~~36~~], Business & Commerce Code),
26 or the common law. The Secretary of State shall deliver to each
27 newly organized corporation, applicant for reservation of a

1 Corporate name, and newly registered foreign corporation a notice
2 containing the substance of this section.

3 SECTION 2.44. CONFORMING AMENDMENT. Section A, Article
4 8.03, Texas Business Corporation Act, is amended to read as
5 follows:

6 A. No certificate of authority shall be issued to a foreign
7 corporation unless the corporate name of such corporation:

8 (1) Shall contain the word "corporation," "company,"
9 "incorporated," or "limited," or shall contain an abbreviation of
10 one (1) of such words, or such corporation shall, for use in this
11 state, add at the end of its name one (1) of such words or an
12 abbreviation thereof.

13 (2) Shall not be the same as, or deceptively similar
14 to, the name of any domestic corporation, limited partnership, or
15 limited liability company existing under the laws of this state or
16 of any foreign corporation, limited partnership, or limited
17 liability company authorized to transact business in this state, or
18 a name the exclusive right to which is, at the time, reserved or
19 registered in the manner provided in this Act or any other statute
20 providing for the reservation or registration of names by a limited
21 partnership or limited liability company; provided that a name may
22 be similar if written consent is obtained from the existing
23 corporation, limited partnership, or limited liability company
24 having the name deemed to be similar or the person for whom the name
25 deemed to be similar is reserved or registered in the office of the
26 Secretary of State. A certificate of authority shall be issued as
27 provided in this Act to any foreign corporation having a name the

1 same as, deceptively similar to, or, if no consent is given, similar
2 to the name of any domestic corporation, limited partnership, or
3 limited liability company existing under the laws of this state or
4 of any foreign corporation, limited partnership, or limited
5 liability company authorized to transact business in this state, or
6 a name the exclusive right to which is, at the time, reserved or
7 registered in accordance with this Act or any other applicable law,
8 provided such foreign corporation qualifies and does business under
9 a name that meets the requirements of this article. The foreign
10 corporation shall set forth in the application for a certificate of
11 authority the name under which it is qualifying and shall file an
12 assumed name certificate in accordance with Chapter 71 [~~36~~],
13 Business & Commerce Code [~~as amended~~].

14 SECTION 2.45. CONFORMING AMENDMENT. Section A, Article
15 8.03, Texas Non-Profit Corporation Act (Article 1396-8.03,
16 Vernon's Texas Civil Statutes), is amended to read as follows:

17 A. No certificate of authority shall be issued to a foreign
18 corporation if the corporate name of such corporation:

19 (1) Contains any word or phrase which indicates or
20 implies that it is organized for any purpose other than one or more
21 of the purposes contained in its articles of incorporation.

22 (2) Is the same as, or deceptively similar to, the name
23 of any corporation, whether for profit or not for profit, existing
24 under any Act of this State, or any foreign corporation, whether for
25 profit or not for profit, authorized to transact business or
26 conduct affairs in this State, or a corporate name reserved or
27 registered as permitted by the laws of this State; provided that a

1 name may be similar if written consent is obtained from the existing
2 corporation having the name deemed to be similar or the person, or
3 corporation for whom the name deemed to be similar is reserved or
4 registered in the office of the Secretary of State. A certificate
5 of authority shall be issued as provided by this Act to any foreign
6 corporation having a name the same as, deceptively similar to, or,
7 if no consent is given, similar to the name of any domestic
8 corporation existing under the laws of this State or of any foreign
9 corporation authorized to transact business or conduct affairs in
10 this State, or a name the exclusive right to which is, at the time,
11 reserved or registered in accordance with this Act, provided the
12 foreign corporation qualifies and does business under a name that
13 meets the requirements of this article. The foreign corporation
14 shall set forth in the application for a certificate of authority
15 the name under which it is qualifying and shall file an assumed name
16 certificate in accordance with Chapter 71 [~~36~~], Business & Commerce
17 Code [~~as amended~~].

18 SECTION 2.46. REPEAL OF ARTICLE 6166.Z8. Chapter 251, Acts
19 of the 40th Legislature, Regular Session, 1927 (Article 6166z8,
20 Vernon's Texas Civil Statutes), is repealed.

21 SECTION 2.47. GENERAL REPEALER. (a) The following
22 provisions of the Business & Commerce Code are repealed:

23 (1) Chapters 19, 34, 35, 36, 37, 38, 39, 40, 41, 42,
24 43, 44, 45, 46, and 47;

25 (2) Chapter 48, as added by Chapter 294, Acts of the
26 79th Legislature, Regular Session, 2005;

27 (3) Chapter 48, as added by Chapter 298, Acts of the

1 79th Legislature, Regular Session, 2005; and

2 (4) Chapter 48, as added by Chapter 544, Acts of the
3 79th Legislature, Regular Session, 2005.

4 (b) The following Acts and articles as compiled in Vernon's
5 Texas Civil Statutes are repealed:

6 (1) 1015g-6;

7 (2) 1446.01, 1446.1, 1446.2, 1446.3, 1446.4, 1446.5,
8 1446.6, 1446.7, 1446.8, 1446.9, 1446.10, 1446.11, 1446.12,
9 1446.13, 1446.14, 1446.15, 1446.16, 1446.17, 1446.18, 1446.19,
10 1446.20, 1446.21, 1446.22, 1446.23, 1446.24, 1446.25, and 1446.26;

11 (3) 8610a, 8612, 8613, and 8614; and

12 (4) 9020, 9023e, 9026a, 9026b, and 9026c.

13 ARTICLE 3. DEVELOPMENT CORPORATIONS

14 SECTION 3.01. CODIFICATION OF DEVELOPMENT CORPORATION ACT
15 OF 1979. Title 12, Local Government Code, is amended by adding
16 Subtitle C1 to read as follows:

17 SUBTITLE C1. ADDITIONAL PLANNING AND DEVELOPMENT PROVISIONS

18 APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

19 CHAPTER 501. PROVISIONS GOVERNING DEVELOPMENT CORPORATIONS

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 501.001. SHORT TITLE

22 Sec. 501.002. DEFINITIONS

23 Sec. 501.003. WHO MAY BE USER

24 Sec. 501.004. LEGISLATIVE FINDINGS; CONSTRUCTION OF

25 SUBTITLE

26 Sec. 501.005. ADOPTION OF ALTERNATE PROCEDURE

27 Sec. 501.006. USE OF CORPORATION TO FINANCE PROJECT

- 1 Sec. 501.007. LENDING CREDIT OR GRANTING PUBLIC MONEY
2 Sec. 501.008. LIMITATION ON FINANCIAL OBLIGATION
3 Sec. 501.009. POLICE POWERS NOT AFFECTED
4 Sec. 501.010. DELEGATION OF UNIT'S SOVEREIGN POWERS
5 PROHIBITED
6 Sec. 501.011. REFERENCE TO ARTICLES OF INCORPORATION
7 OR CERTIFICATE OF FORMATION
8 [Sections 501.012-501.050 reserved for expansion]
9 SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION
10 Sec. 501.051. AUTHORITY TO CREATE
11 Sec. 501.052. NONMEMBER, NONSTOCK FORM OF CORPORATION
12 Sec. 501.053. CORPORATION NONPROFIT; NET EARNINGS
13 Sec. 501.054. GENERAL POWERS, PRIVILEGES, AND
14 FUNCTIONS
15 Sec. 501.055. CONSTITUTED AUTHORITY OR INSTRUMENTALITY
16 Sec. 501.056. CONTENTS OF CERTIFICATE OF FORMATION
17 Sec. 501.057. FILING OF CERTIFICATE OF FORMATION AND
18 DELIVERY OF CERTIFICATE
19 EVIDENCING FILING
20 Sec. 501.058. EFFECT OF ISSUANCE OF CERTIFICATE
21 EVIDENCING FILING
22 Sec. 501.059. CORPORATE SEAL
23 Sec. 501.060. MAY SUE AND BE SUED
24 Sec. 501.061. CORPORATION'S ORGANIZATION NOT
25 RESTRICTED
26 Sec. 501.062. BOARD OF DIRECTORS
27 Sec. 501.063. ORGANIZATIONAL MEETING

- 1 Sec. 501.064. BYLAWS
- 2 Sec. 501.065. OFFICERS
- 3 Sec. 501.066. INDEMNIFICATION
- 4 Sec. 501.067. INSURANCE AND BENEFITS
- 5 Sec. 501.068. BOARD MEETINGS; NOTICE OF MEETING
- 6 Sec. 501.069. WAIVER OF NOTICE
- 7 Sec. 501.070. ACTION OF BOARD; QUORUM
- 8 Sec. 501.071. ACTION WITHOUT MEETING
- 9 Sec. 501.072. OPEN MEETINGS AND PUBLIC INFORMATION
- 10 Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT
- 11 Sec. 501.074. PURCHASING
- 12 Sec. 501.075. EXEMPTION FROM TAXATION
- 13 [Sections 501.076-501.100 reserved for expansion]
- 14 SUBCHAPTER C. AUTHORIZED PROJECTS
- 15 Sec. 501.101. PROJECTS RELATED TO CREATION OR
- 16 RETENTION OF PRIMARY JOBS
- 17 Sec. 501.102. PROJECTS RELATED TO CERTAIN JOB TRAINING
- 18 Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT
- 19 PROJECTS
- 20 Sec. 501.104. PROJECTS RELATED TO CERTAIN MILITARY
- 21 BASES OR MISSIONS
- 22 Sec. 501.105. CAREER CENTER PROJECTS OUTSIDE OF JUNIOR
- 23 COLLEGE DISTRICT
- 24 Sec. 501.106. AIRPORT FACILITIES OR OTHER PROJECTS BY
- 25 CORPORATIONS AUTHORIZED BY CERTAIN
- 26 BORDER MUNICIPALITIES

- 1 Sec. 501.107. INFRASTRUCTURE PROJECTS BY CORPORATIONS
2 AUTHORIZED BY MUNICIPALITIES IN
3 CERTAIN BORDER COUNTIES
4 [Sections 501.108-501.150 reserved for expansion]
5 SUBCHAPTER D. CORPORATE POWERS AND LIMITATIONS RELATING TO
6 PROJECTS
7 Sec. 501.151. AUTHORITY TO FINANCE PROJECT
8 Sec. 501.152. DEFINITION OF COST WITH RESPECT TO
9 PROJECT
10 Sec. 501.153. LEASE OR SALE OF PROJECT
11 Sec. 501.154. CONVEYANCE OF PROPERTY TO INSTITUTION OF
12 HIGHER EDUCATION
13 Sec. 501.155. LOAN TO FINANCE PROJECT
14 Sec. 501.156. AGREEMENT MUST BENEFIT CORPORATION
15 Sec. 501.157. DEFAULT ON AGREEMENT; ENFORCEMENT
16 Sec. 501.158. PERFORMANCE AGREEMENTS
17 Sec. 501.159. POWERS CONCERNING
18 PROJECTS; JURISDICTION
19 Sec. 501.160. OWNING OR OPERATING PROJECT AS BUSINESS
20 Sec. 501.161. CERTAIN ECONOMIC INCENTIVES PROHIBITED
21 Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING
22 [Sections 501.163-501.200 reserved for expansion]
23 SUBCHAPTER E. CORPORATE POWERS AND LIMITATIONS RELATING TO BONDS
24 Sec. 501.201. AUTHORITY TO ISSUE BONDS
25 Sec. 501.202. TERMS
26 Sec. 501.203. SECURITIES COMMISSIONER PERMIT TO SELL
27 SECURITIES REQUIRED

- 1 Sec. 501.204. AUTHORIZING UNIT'S APPROVAL OF BONDS
- 2 Sec. 501.205. BOND COUNSEL AND FINANCIAL ADVISORS
- 3 Sec. 501.206. MONEY USED TO PAY BONDS
- 4 Sec. 501.207. BONDS NOT DEBT OF STATE OR AUTHORIZING
- 5 UNIT
- 6 Sec. 501.208. BOND SECURITY; DEFAULT
- 7 Sec. 501.209. TRUST AGREEMENT
- 8 Sec. 501.210. FINANCIAL ASSURANCE OR RESPONSIBILITY
- 9 REQUIREMENTS FOR CERTAIN PROJECTS
- 10 Sec. 501.211. USE OF BOND PROCEEDS
- 11 Sec. 501.212. INTERIM BONDS
- 12 Sec. 501.213. REFUNDING BONDS
- 13 Sec. 501.214. SALE OR EXCHANGE OF BONDS
- 14 [Sections 501.215-501.250 reserved for expansion]
- 15 SUBCHAPTER F. ADMINISTRATION BY ECONOMIC DEVELOPMENT OFFICE
- 16 Sec. 501.251. STATE STANDARDS FOR PROJECT ELIGIBILITY
- 17 Sec. 501.252. STATE STANDARDS AND GUIDELINES FOR
- 18 LEASE, SALE, OR LOAN AGREEMENTS
- 19 Sec. 501.253. RULES FOR SMALL BUSINESS PROGRAMS
- 20 Sec. 501.254. FILING OF RULES AND GUIDELINES WITH
- 21 SECRETARY OF STATE
- 22 Sec. 501.255. APPROVAL OF LEASE, SALE, OR LOAN
- 23 AGREEMENT
- 24 Sec. 501.256. APPROVAL OF BONDS BY ECONOMIC
- 25 DEVELOPMENT OFFICE
- 26 Sec. 501.257. FILING OF FEE SCHEDULE AND
- 27 BOND PROCEDURES

- 1 Sec. 501.258. DELEGATION OF AUTHORITY
2 [Sections 501.259-501.300 reserved for expansion]
3 SUBCHAPTER G. AMENDMENT OR RESTATEMENT OF
4 CERTIFICATE OF FORMATION
5 Sec. 501.301. AMENDMENT BY BOARD OF DIRECTORS
6 Sec. 501.302. AMENDMENT BY UNIT
7 Sec. 501.303. AMENDMENT TO COUNTY ALLIANCE
8 CORPORATION'S CERTIFICATE OF FORMATION
9 Sec. 501.304. CONTENTS OF CERTIFICATE OF AMENDMENT
10 Sec. 501.305. EXECUTION AND VERIFICATION OF
11 CERTIFICATE OF AMENDMENT
12 Sec. 501.306. DELIVERY AND FILING OF CERTIFICATE OF
13 AMENDMENT
14 Sec. 501.307. SUITS OR RIGHTS NOT AFFECTED
15 Sec. 501.308. RESTATED CERTIFICATE OF FORMATION
16 Sec. 501.309. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT
17 Sec. 501.310. RESTATEMENT WITH ADDITIONAL AMENDMENT
18 Sec. 501.311. CHANGE IN CERTAIN INFORMATION NOT
19 AMENDMENT
20 Sec. 501.312. EXECUTION AND VERIFICATION OF RESTATED
21 CERTIFICATE OF FORMATION
22 Sec. 501.313. DELIVERY AND FILING OF RESTATED
23 CERTIFICATE OF FORMATION
24 Sec. 501.314. EFFECT OF ISSUANCE OF CERTIFICATE
25 EVIDENCING FILING OF RESTATED
26 CERTIFICATE OF FORMATION
27 [Sections 501.315-501.350 reserved for expansion]

1 SUBCHAPTER H. REGISTERED OFFICE AND AGENT; SERVICE OF PROCESS

2 Sec. 501.351. REGISTERED OFFICE AND AGENT

3 Sec. 501.352. CHANGE OF REGISTERED OFFICE OR AGENT

4 Sec. 501.353. RESIGNATION OF REGISTERED AGENT

5 Sec. 501.354. AGENTS FOR SERVICE

6 [Sections 501.355-501.400 reserved for expansion]

7 SUBCHAPTER I. ALTERATION OR TERMINATION OF CORPORATION

8 Sec. 501.401. ALTERATION OR TERMINATION BY AUTHORIZING
9 UNIT

10 Sec. 501.402. TERMINATION OF CORPORATION ON COMPLETION
11 OF PURPOSE

12 Sec. 501.403. EXECUTION OF CERTIFICATE OF TERMINATION

13 Sec. 501.404. DELIVERY AND FILING OF CERTIFICATE OF
14 TERMINATION

15 Sec. 501.405. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING
16 FILING OF CERTIFICATE OF TERMINATION

17 Sec. 501.406. ASSETS ON TERMINATION

18 Sec. 501.407. TERMINATION WITH TRANSFER OF ASSETS TO
19 TYPE A CORPORATION

20 SUBTITLE C1. ADDITIONAL PLANNING AND DEVELOPMENT PROVISIONS
21 APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

22 CHAPTER 501. PROVISIONS GOVERNING DEVELOPMENT CORPORATIONS

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 501.001. SHORT TITLE. This subtitle may be cited as
25 the Development Corporation Act. (V.A.C.S. Art. 5190.6, Sec. 1.)

26 Sec. 501.002. DEFINITIONS. In this subtitle:

27 (1) "Authorizing unit" means the unit that authorizes

1 the creation of a corporation under this subtitle.

2 (2) "Board of directors" means the board of directors
3 of a corporation.

4 (3) "Bonds" includes evidences of indebtedness,
5 including bonds and notes.

6 (4) "Corporate headquarters facilities" means
7 buildings proposed for construction or occupancy as the principal
8 office for a business enterprise's administrative and management
9 services.

10 (5) "Corporation" means a corporation organized under
11 this subtitle.

12 (6) "Cost," with respect to a project, has the meaning
13 assigned by Section 501.152.

14 (7) "County alliance" means two or more counties that
15 jointly authorize the creation of a corporation under this
16 subtitle.

17 (8) "District" means a conservation and reclamation
18 district established under Section 59, Article XVI, Texas
19 Constitution.

20 (9) "Economic development office" means the Texas
21 Economic Development and Tourism Office within the office of the
22 governor.

23 (10) "Governing body" means the commissioners court of
24 a county or the governing body of a municipality or district.

25 (11) "Institution of higher education" has the meaning
26 assigned by Section 61.003, Education Code.

27 (12) "Primary job" means:

1 (A) a job that is:

2 (i) available at a company for which a
3 majority of the products or services of that company are ultimately
4 exported to regional, statewide, national, or international
5 markets infusing new dollars into the local economy; and

6 (ii) included in one of the following
7 sectors of the North American Industry Classification System
8 (NAICS):

9	NAICS Sector #	Description
10	111	Crop Production
11	112	Animal Production
12	113	Forestry and Logging
13	11411	Commercial Fishing
14	115	Support Activities for Agriculture
15		and Forestry
16	211-213	Mining
17	221	Utilities
18	311-339	Manufacturing
19	42	Wholesale Trade
20	48-49	Transportation and Warehousing
21	51 (excluding	Information (excluding motion picture
22	512131 and	theaters and drive-in motion picture
23	512132)	theaters)

1	523-525	Securities, Commodity Contracts, and
2		Other Financial Investments and
3		Related Activities; Insurance
4		Carriers and Related Activities;
5		Funds, Trusts, and Other Financial
6		Vehicles
7	5413, 5415, 5416,	Architectural, Engineering, and
8	5417, and 5419	Related Services; Computer System
9		Design and Related Services;
10		Management, Scientific, and Technical
11		Consulting Services; Scientific
12		Research and Development Services;
13		Other Professional, Scientific, and
14		Technical Services
15	551	Management of Companies and
16		Enterprises
17	56142	Telephone Call Centers
18	922140	Correctional Institutions; or

19 (B) a job that is included in North American
20 Industry Classification System (NAICS) sector number 928110,
21 National Security, for the corresponding index entries for Armed
22 Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

23 (13) "Project" means a project specified as such under
24 Subchapter C.

25 (14) "Resolution" means a resolution, order,
26 ordinance, or other official action by the governing body of a unit.

27 (15) "Type A corporation" means a corporation governed

1 by Chapter 504.

2 (16) "Type B corporation" means a corporation governed
3 by Chapter 505.

4 (17) "Unit" means a municipality, county, or district
5 that may create and use a corporation under this subtitle.
6 (V.A.C.S. Art. 5190.6, Secs. 2(1), (2), (3), (7), (8), (9), (10)
7 (part), (11) (part), as amended Acts 79th Leg., R.S., Chs. 1, 1048,
8 1148, (12), (13), (14), (15), as added Acts 76th Leg., R.S., Ch.
9 296, (17), (18); New.)

10 Sec. 501.003. WHO MAY BE USER. The following may be a user
11 under this subtitle:

12 (1) an individual, a partnership, a corporation, or
13 any other private entity organized for profit or not for profit; or

14 (2) a municipality, county, district, other political
15 subdivision, public entity, or agency of this state or the federal
16 government. (V.A.C.S. Art. 5190.6, Sec. 2(15), as added Acts 76th
17 Leg., R.S., Ch. 973.)

18 Sec. 501.004. LEGISLATIVE FINDINGS; CONSTRUCTION OF
19 SUBTITLE. (a) The legislature finds that:

20 (1) the present and prospective right to gainful
21 employment and the general welfare of the people of this state
22 require as a public purpose the promotion and development of new and
23 expanded business enterprises and of job training;

24 (2) the existence, development, and expansion of
25 business, commerce, industry, higher education, and job training
26 are essential to the economic growth of this state and to the full
27 employment, welfare, and prosperity of residents of this state;

1 (3) the assistance provided by corporations in
2 promoting higher education opportunities encourages and fosters
3 the development and diversification of the economy of this state
4 and the elimination of unemployment and underemployment in this
5 state;

6 (4) the means authorized by this subtitle and the
7 assistance provided by this subtitle, especially with respect to
8 financing, are in the public interest and serve a public purpose of
9 this state in promoting the welfare of the residents of this state
10 economically by securing and retaining business enterprises and as
11 a result maintaining a higher level of employment, economic
12 activity, and stability;

13 (5) community industrial development corporations in
14 this state have invested substantial money in successful industrial
15 development projects and have experienced difficulty in
16 undertaking additional industrial development projects because of
17 the partial inadequacy of the community industrial development
18 corporations' money or money potentially available from local
19 subscription sources and the limitations of local financial
20 institutions in providing additional and sufficiently large first
21 mortgage loans; and

22 (6) communities in this state have been at a critical
23 disadvantage in competing with communities in other states for the
24 location or expansion of business enterprises because of the
25 availability and prevalent use in all other states of financing and
26 other special incentives, and, for that reason, the issuance of
27 revenue bonds under this subtitle by a corporation on behalf of

1 political subdivisions of this state for the promotion and
2 development of new and expanded business enterprises to provide and
3 encourage employment and the public welfare is in the public
4 interest and is a public purpose.

5 (b) This subtitle shall be construed in conformity with the
6 intention of the legislature expressed in this section. (V.A.C.S.
7 Art. 5190.6, Sec. 3.)

8 Sec. 501.005. ADOPTION OF ALTERNATE PROCEDURE. If a court
9 holds that a procedure under this subtitle violates the federal or
10 state constitution, a corporation by resolution may provide an
11 alternate procedure that conforms to the constitution. (V.A.C.S.
12 Art. 5190.6, Sec. 37 (part).)

13 Sec. 501.006. USE OF CORPORATION TO FINANCE PROJECT. A unit
14 may use a corporation to issue bonds on the unit's behalf to finance
15 the cost of a project, including a project in a federally designated
16 empowerment zone or enterprise community or in an enterprise zone
17 designated under Chapter 2303, Government Code, to promote and
18 develop new and expanded business enterprises for the promotion and
19 encouragement of employment and the public welfare. (V.A.C.S. Art.
20 5190.6, Sec. 21 (part).)

21 Sec. 501.007. LENDING CREDIT OR GRANTING PUBLIC MONEY. (a)
22 Except as provided by Subsection (b), a unit may not lend its credit
23 or grant public money or another thing of value in aid of a
24 corporation.

25 (b) A municipality may grant public money to a corporation
26 under a contract authorized by Section 380.002. (V.A.C.S. Art.
27 5190.6, Sec. 21 (part).)

1 Sec. 501.008. LIMITATION ON FINANCIAL OBLIGATION. A
2 corporation may not incur a financial obligation that cannot be
3 paid from:

- 4 (1) bond proceeds;
- 5 (2) revenue realized from the lease or sale of a
6 project;
- 7 (3) revenue realized from a loan made by the
8 corporation to wholly or partly finance or refinance a project; or
- 9 (4) money granted under a contract with a municipality
10 under Section 380.002. (V.A.C.S. Art. 5190.6, Sec. 22 (part).)

11 Sec. 501.009. POLICE POWERS NOT AFFECTED. This subtitle
12 does not deprive this state or a governmental subdivision of this
13 state of its police powers over a corporation's property and does
14 not impair any police power over the property that is otherwise
15 provided by law to any official or agency of this state or its
16 governmental subdivisions. (V.A.C.S. Art. 5190.6, Sec. 37 (part).)

17 Sec. 501.010. DELEGATION OF UNIT'S SOVEREIGN POWERS
18 PROHIBITED. A unit may not delegate to a corporation any of the
19 unit's attributes of sovereignty, including the power to tax, the
20 power of eminent domain, and the police power. (V.A.C.S. Art.
21 5190.6, Sec. 22 (part).)

22 Sec. 501.011. REFERENCE TO ARTICLES OF INCORPORATION OR
23 CERTIFICATE OF FORMATION. (a) With respect to a corporation
24 created under the Development Corporation Act of 1979 (Article
25 5190.6, Vernon's Texas Civil Statutes) before January 1, 2006, a
26 reference in any law of this state or in the corporation's governing
27 documents to "articles of incorporation" means, for purposes of

1 this subtitle, the corporation's certificate of formation.

2 (b) With respect to a corporation that is created under the
3 Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas
4 Civil Statutes) before January 1, 2006, and continues to operate
5 under articles of incorporation, a reference in this subtitle or
6 any other law of this state or in the corporation's governing
7 documents to "certificate of formation" means the corporation's
8 articles of incorporation. (New.)

9 [Sections 501.012-501.050 reserved for expansion]

10 SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

11 Sec. 501.051. AUTHORITY TO CREATE. (a) Three or more
12 individuals who are qualified voters of a unit may file with the
13 unit's governing body a written application requesting the unit to
14 authorize creation of a corporation to act on behalf of the unit.
15 The governing body may not charge a filing fee for the application.

16 (b) A corporation may be created only if the governing body
17 of the unit by resolution:

18 (1) determines that the creation of the corporation is
19 advisable; and

20 (2) approves the certificate of formation proposed to
21 be used in organizing the corporation.

22 (c) A unit may authorize the creation of one or more
23 corporations if the resolution authorizing the creation of each
24 corporation specifies the public purpose of the unit to be
25 furthered by the corporation. The specified public purpose must be
26 limited to the promotion and development under this subtitle of
27 enterprises to promote and encourage employment and the public

1 welfare. (V.A.C.S. Art. 5190.6, Sec. 4(a) (part).)

2 Sec. 501.052. NONMEMBER, NONSTOCK FORM OF CORPORATION. A
3 corporation is a nonmember, nonstock corporation. (V.A.C.S. Art.
4 5190.6, Sec. 5.)

5 Sec. 501.053. CORPORATION NONPROFIT; NET EARNINGS. (a) A
6 corporation is nonprofit, and the corporation's net earnings
7 remaining after payment of its expenses may not benefit an
8 individual, firm, or corporation, except as provided by Subsection
9 (b).

10 (b) If the board of directors determines that sufficient
11 provision has been made for the full payment of the corporation's
12 expenses, bonds, and other obligations, any net earnings of the
13 corporation subsequently accruing shall be paid to the
14 corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Sec. 33.)

15 Sec. 501.054. GENERAL POWERS, PRIVILEGES, AND FUNCTIONS.
16 (a) A corporation has the powers, privileges, and functions of a
17 nonprofit corporation incorporated under the Texas Non-Profit
18 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil
19 Statutes) or formed under the Texas Nonprofit Corporation Law, as
20 described by Section 1.008, Business Organizations Code. To the
21 extent that the provisions governing powers, privileges, and
22 functions of a nonprofit corporation under those laws are in
23 conflict with or inconsistent with provisions of this subtitle
24 governing powers, privileges, and functions of a nonprofit
25 corporation, the provisions of this subtitle prevail.

26 (b) A corporation:

27 (1) has all powers incidental to or necessary for the

1 performance of the powers provided by Sections 501.059, 501.060,
2 501.064, 501.153-501.155, 501.159, 501.201(a), 501.208, 501.209,
3 501.214, and 501.402; and

4 (2) with respect to a project, may exercise all powers
5 necessary or appropriate to effect a purpose for which the
6 corporation is organized, subject to the control of the governing
7 body of the corporation's authorizing unit. (V.A.C.S. Art. 5190.6,
8 Sec. 23(a) (part).)

9 Sec. 501.055. CONSTITUTED AUTHORITY OR INSTRUMENTALITY.

10 (a) A corporation is a constituted authority and an
11 instrumentality, within the meaning of the United States Department
12 of the Treasury regulations and the Internal Revenue Service
13 rulings adopted under Section 103, Internal Revenue Code of 1986,
14 as amended, including regulations and rulings adopted under Section
15 103, Internal Revenue Code of 1954, and may act on behalf of the
16 corporation's authorizing unit for the specific public purpose
17 authorized by the unit.

18 (b) A corporation is not a political subdivision or a
19 political corporation for purposes of the laws of this state,
20 including Section 52, Article III, Texas Constitution. (V.A.C.S.
21 Art. 5190.6, Sec. 22 (part).)

22 Sec. 501.056. CONTENTS OF CERTIFICATE OF FORMATION. The
23 certificate of formation of a corporation must state:

- 24 (1) the name of the corporation;
25 (2) that the corporation is a nonprofit corporation;
26 (3) the duration of the corporation, which may be
27 perpetual;

1 (4) the specific purpose for which the corporation is
2 organized and may issue bonds on behalf of the unit;

3 (5) that the corporation has no members and is a
4 nonstock corporation;

5 (6) any provision consistent with law for the
6 regulation of the corporation's internal affairs, including any
7 provision required or permitted by this subtitle to be stated in the
8 bylaws;

9 (7) the street address of the corporation's initial
10 registered office and the name of the corporation's initial
11 registered agent at that address;

12 (8) the number of directors of the initial board of
13 directors and the name and address of each initial director;

14 (9) the name and street address of each organizer; and

15 (10) that the unit has:

16 (A) by resolution specifically authorized the
17 corporation to act on the unit's behalf to further the public
18 purpose stated in the resolution and the certificate of formation;
19 and

20 (B) approved the certificate of formation.
21 (V.A.C.S. Art. 5190.6, Sec. 6.)

22 Sec. 501.057. FILING OF CERTIFICATE OF FORMATION AND
23 DELIVERY OF CERTIFICATE EVIDENCING FILING. (a) If the unit's
24 governing body adopts a resolution under Section 501.051, the
25 certificate of formation may be filed as provided by this section.

26 (b) Three originals of the certificate of formation shall be
27 delivered to the secretary of state. If the secretary of state

1 determines that the certificate of formation conforms to this
2 subchapter, the secretary of state shall:

3 (1) endorse the word "Filed" and the date of the filing
4 on each original certificate of formation;

5 (2) file one of the original certificates of formation
6 in the secretary of state's office;

7 (3) issue two certificates evidencing the filing of
8 the certificate of formation;

9 (4) attach to each certificate evidencing the filing
10 of the certificate of formation an original of the certificate of
11 formation; and

12 (5) deliver a certificate evidencing the filing of the
13 certificate of formation and the attached certificate of formation
14 to:

15 (A) the organizers or the organizers'
16 representatives; and

17 (B) the governing body of:

18 (i) the corporation's authorizing unit; or

19 (ii) any county in the county alliance that
20 authorized the creation of the corporation, for a county alliance
21 corporation.

22 (c) The governing body of a county to which a certificate
23 evidencing the filing of the certificate of formation and the
24 attached certificate of formation are delivered under Subsection
25 (b)(5)(B)(ii) shall provide photocopies of the certificate
26 evidencing the filing of the certificate of formation and the
27 attached certificate of formation to each other member of the

1 county alliance. (V.A.C.S. Art. 5190.6, Secs. 4(a) (part), 7(a),
2 (b).)

3 Sec. 501.058. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING
4 FILING. (a) A corporation's existence begins when the certificate
5 evidencing the filing of its certificate of formation is issued.

6 (b) After the issuance of the certificate evidencing the
7 filing of the certificate of formation, the formation of the
8 corporation may not be contested for any reason.

9 (c) A certificate evidencing the filing of the certificate
10 of formation is conclusive evidence that:

11 (1) the organizers and the unit have performed all
12 conditions precedent for the formation of the corporation; and

13 (2) the corporation is formed under this subtitle.
14 (V.A.C.S. Art. 5190.6, Sec. 7(c).)

15 Sec. 501.059. CORPORATE SEAL. A corporation may have a
16 corporate seal and with respect to a project may impress, affix, or
17 otherwise reproduce the seal or a facsimile of the seal on an
18 instrument required to be executed by the corporation's appropriate
19 officers. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

20 Sec. 501.060. MAY SUE AND BE SUED. With respect to a
21 project, a corporation may sue, be sued, complain, and defend in the
22 corporation's name. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

23 Sec. 501.061. CORPORATION'S ORGANIZATION NOT RESTRICTED.
24 Except as provided by this subtitle, no proceeding, notice, or
25 approval is required for the organization of a corporation.
26 (V.A.C.S. Art. 5190.6, Sec. 37 (part).)

27 Sec. 501.062. BOARD OF DIRECTORS. (a) All of the powers of

1 a corporation are vested in a board of directors consisting of three
2 or more directors appointed by the governing body of the
3 corporation's authorizing unit.

4 (b) A director serves for a term of not more than six years.

5 (c) The governing body of the corporation's authorizing
6 unit may remove a director for cause or at will.

7 (d) A director serves without compensation, but is entitled
8 to reimbursement for actual expenses incurred in the performance of
9 the director's duties under this subtitle. (V.A.C.S. Art. 5190.6,
10 Sec. 11(a).)

11 Sec. 501.063. ORGANIZATIONAL MEETING. (a) After issuance
12 of the certificate evidencing the filing of the certificate of
13 formation, the board of directors named in the certificate of
14 formation shall hold an organizational meeting in this state to
15 adopt bylaws and elect officers and for other purposes.

16 (b) Not later than the third day before the date of the
17 meeting, the organizers who call the meeting shall give notice by
18 mail of the time and place of the meeting to each director named in
19 the certificate of formation. (V.A.C.S. Art. 5190.6, Sec. 12.)

20 Sec. 501.064. BYLAWS. (a) A corporation may adopt and
21 amend bylaws for the administration and regulation of the
22 corporation's affairs.

23 (b) The board of directors shall adopt a corporation's
24 initial bylaws.

25 (c) The bylaws and each amendment of the bylaws must:

26 (1) be consistent with state law and with the
27 certificate of formation of the corporation; and

1 (2) be approved by resolution of the governing body of
2 the corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Secs.
3 13, 23(a) (part).)

4 Sec. 501.065. OFFICERS. (a) A corporation has the
5 following officers:

- 6 (1) a president;
7 (2) at least one vice president;
8 (3) a secretary;
9 (4) a treasurer; and
10 (5) other officers or assistant officers considered
11 necessary.

12 (b) An officer of the corporation is elected or appointed at
13 the time, in the manner, and for the term prescribed by the
14 certificate of formation or bylaws, except that an officer's term
15 may not exceed three years. In the absence of provisions in the
16 certificate of formation or the bylaws prescribing the selection or
17 terms of officers, the board of directors shall annually elect or
18 appoint officers.

19 (c) A person may hold more than one office, except that the
20 same person may not hold the offices of president and secretary.
21 (V.A.C.S. Art. 5190.6, Sec. 16.)

22 Sec. 501.066. INDEMNIFICATION. (a) In this section,
23 "director or officer" includes a former director or officer.

24 (b) Except as provided by Subsection (d), a corporation may
25 indemnify a director or officer of the corporation for necessary
26 expenses and costs, including attorney's fees, actually incurred by
27 the director or officer in connection with a claim asserted against

1 the director or officer, by action in court or another forum, by
2 reason of the director's or officer's being or having been a
3 director or officer of the corporation.

4 (c) Except as provided by Subsection (d), if a corporation
5 has not fully indemnified a director or officer under Subsection
6 (b), the court in a proceeding in which a claim is asserted against
7 the director or officer or a court having jurisdiction over an
8 action brought by the director or officer on a claim for indemnity
9 may assess indemnity against the corporation or the corporation's
10 receiver or trustee. The assessment must equal the amount that the
11 director or officer paid to satisfy the judgment or compromise the
12 claim, including attorney's fees and not including any amount paid
13 to the corporation, to the extent that:

14 (1) the amount paid was actually and necessarily
15 incurred; and

16 (2) the court considers the amount paid reasonable and
17 equitable.

18 (d) A corporation may not indemnify a director or officer
19 for a matter in which the director or officer is guilty of
20 negligence or misconduct. A court may assess indemnity against the
21 corporation only if the court finds that the director or officer was
22 not guilty of negligence or misconduct in the matter for which
23 indemnity is sought. (V.A.C.S. Art. 5190.6, Secs. 15(a), (b);
24 New.)

25 Sec. 501.067. INSURANCE AND BENEFITS. (a) Notwithstanding
26 any law to the contrary and with the consent of the corporation's
27 authorizing unit, a corporation may obtain:

1 (1) health benefits coverage, liability coverage,
2 workers' compensation coverage, and property coverage under the
3 authorizing unit's insurance policies, through self-funded
4 coverage, or under coverage provided under an interlocal agreement
5 with a political subdivision; or

6 (2) retirement benefits under a retirement program the
7 authorizing unit participates in or operates.

8 (b) Health benefits coverage may be extended to the
9 corporation's directors and employees, and to the dependents of the
10 directors and employees.

11 (c) Workers' compensation benefits may be extended to the
12 corporation's directors, employees, and volunteers.

13 (d) Liability coverage may be extended to protect the
14 corporation and the corporation's directors and employees.

15 (e) Retirement benefits may be extended to the
16 corporation's employees. (V.A.C.S. Art. 5190.6, Secs. 23(c), (d).)

17 Sec. 501.068. BOARD MEETINGS; NOTICE OF MEETING. (a) A
18 board of directors may hold a regular meeting in this state with or
19 without notice as prescribed by the corporation's bylaws.

20 (b) A board of directors may hold a special meeting with
21 notice as prescribed by the corporation's bylaws.

22 (c) A director's attendance at a board meeting constitutes a
23 waiver of notice of the meeting, unless the director attends the
24 meeting for the express purpose of objecting to the transaction of
25 any business at the meeting because the meeting has not been
26 lawfully called or convened.

27 (d) Unless required by the corporation's bylaws, notice or

1 waiver of notice of a board meeting is not required to specify the
2 business to be transacted at the meeting or the purpose of the
3 meeting. (V.A.C.S. Art. 5190.6, Sec. 15(c).)

4 Sec. 501.069. WAIVER OF NOTICE. If a notice is required to
5 be given to a director of a corporation under this subtitle or the
6 corporation's certificate of formation or bylaws, a written waiver
7 of the notice signed by the person entitled to the notice is
8 equivalent to giving the required notice. The waiver may be given
9 before or after the time that would have been stated in the notice.
10 (V.A.C.S. Art. 5190.6, Sec. 15(d).)

11 Sec. 501.070. ACTION OF BOARD; QUORUM. (a) A quorum of a
12 board of directors is the lesser of:

13 (1) a majority of the number of directors:
14 (A) established by the corporation's bylaws; or
15 (B) stated in the corporation's certificate of
16 formation, if the bylaws do not establish the number of directors;
17 or

18 (2) the number of directors, not less than three,
19 established as a quorum by the certificate of formation or bylaws.

20 (b) The act of a majority of the directors present at a
21 meeting at which a quorum is present is an act of the board of
22 directors, unless the act of a larger number is required by the
23 certificate of formation or bylaws of the corporation. (V.A.C.S.
24 Art. 5190.6, Secs. 14(a), (b).)

25 Sec. 501.071. ACTION WITHOUT MEETING. (a) An action that
26 may be taken at a meeting of a board of directors, including an
27 action required by this subtitle to be taken at a meeting, may be

1 taken without a meeting if each director signs a written consent
2 providing the action to be taken.

3 (b) The consent has the same effect as a unanimous vote and
4 may be stated as such in a document filed with the secretary of
5 state under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 14(c).)

6 Sec. 501.072. OPEN MEETINGS AND PUBLIC INFORMATION. A
7 board of directors is subject to the open meetings law, Chapter 551,
8 Government Code, and the public information law, Chapter 552,
9 Government Code. (V.A.C.S. Art. 5190.6, Secs. 11(b), 14A.)

10 Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT. (a) The
11 corporation's authorizing unit will approve all programs and
12 expenditures of a corporation and annually review any financial
13 statements of the corporation.

14 (b) A corporation's authorizing unit is entitled to access
15 to the corporation's books and records at all times. (V.A.C.S. Art.
16 5190.6, Sec. 21 (part).)

17 Sec. 501.074. PURCHASING. A corporation may use the
18 reverse auction procedure defined by Section 2155.062(d),
19 Government Code, for purchasing. (V.A.C.S. Art. 5190.6, Sec.
20 23(e).)

21 Sec. 501.075. EXEMPTION FROM TAXATION. (a) The activities
22 of a corporation affect all the residents of the corporation's
23 authorizing unit by the corporation's assuming to a material extent
24 what otherwise might be an obligation or duty of the authorizing
25 unit, and therefore the corporation is an institution of purely
26 public charity within the tax exemption of Section 2, Article VIII,
27 Texas Constitution.

1 (b) A corporation is exempt from the tax imposed by Chapter
2 171, Tax Code, only if the corporation is exempted by that chapter.
3 (V.A.C.S. Art. 5190.6, Sec. 32.)

4 [Sections 501.076-501.100 reserved for expansion]

5 SUBCHAPTER C. AUTHORIZED PROJECTS

6 Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF
7 PRIMARY JOBS. In this subtitle, "project" includes the land,
8 buildings, equipment, facilities, expenditures, targeted
9 infrastructure, and improvements that are:

10 (1) for the creation or retention of primary jobs; and

11 (2) found by the board of directors to be required or
12 suitable for the development, retention, or expansion of:

13 (A) manufacturing and industrial facilities;

14 (B) research and development facilities;

15 (C) military facilities, including closed or
16 realigned military bases;

17 (D) transportation facilities, including
18 airports, ports, mass commuting facilities, and parking
19 facilities;

20 (E) sewage or solid waste disposal facilities;

21 (F) recycling facilities;

22 (G) air or water pollution control facilities;

23 (H) facilities for furnishing water to the
24 public;

25 (I) distribution centers;

26 (J) small warehouse facilities capable of
27 serving as decentralized storage and distribution centers;

1 (K) primary job training facilities for use by
2 institutions of higher education; or

3 (L) regional or national corporate headquarters
4 facilities. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended
5 Acts 79th Leg., R.S., Chs. 1, 1048, 1148.)

6 Sec. 501.102. PROJECTS RELATED TO CERTAIN JOB TRAINING. In
7 this subtitle, "project" includes job training required or suitable
8 for the promotion of development and expansion of business
9 enterprises and other enterprises described by this subtitle, as
10 provided by Section 501.162. (V.A.C.S. Art. 5190.6, Sec. 2(11)
11 (part), as amended Acts 79th Leg., R.S., Chs. 1, 1048, 1148.)

12 Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS.
13 In this subtitle, "project" includes expenditures that are found by
14 the board of directors to be required or suitable for
15 infrastructure necessary to promote or develop new or expanded
16 business enterprises, limited to:

17 (1) streets and roads, rail spurs, water and sewer
18 utilities, electric utilities, or gas utilities, drainage, site
19 improvements, and related improvements;

20 (2) telecommunications and Internet improvements; or

21 (3) beach remediation along the Gulf of Mexico.
22 (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th
23 Leg., R.S., Chs. 1, 1048, 1148.)

24 Sec. 501.104. PROJECTS RELATED TO CERTAIN MILITARY BASES OR
25 MISSIONS. In this subtitle, "project" includes the infrastructure,
26 improvements, land acquisition, buildings, or expenditures that:

27 (1) are for the creation or retention of primary jobs

1 or jobs that are included in North American Industry Classification
2 System (NAICS) sector number 926120, Regulation and Administration
3 of Transportation Programs, for the corresponding index entry for
4 Coast Guard (except the Coast Guard Academy); and

5 (2) are found by the board of directors to be required
6 or suitable for:

7 (A) promoting or supporting a military base in
8 active use to prevent the possible future closure or realignment of
9 the base;

10 (B) attracting new military missions to a
11 military base in active use; or

12 (C) redeveloping a military base that has been
13 closed or realigned, including a military base closed or realigned
14 according to the recommendation of the Defense Base Closure and
15 Realignment Commission under the Defense Base Closure and
16 Realignment Act of 1990 (10 U.S.C. Section 2687 note). (V.A.C.S.
17 Art. 5190.6, Sec. 2(11) (part), as amended Acts 79th Leg., R.S., Ch.
18 1.)

19 Sec. 501.105. CAREER CENTER PROJECTS OUTSIDE OF JUNIOR
20 COLLEGE DISTRICT. In this subtitle, "project" includes the land,
21 buildings, equipment, facilities, improvements, and expenditures
22 found by the board of directors to be required or suitable for use
23 for a career center, if the area to be benefited by the career
24 center is not located in the taxing jurisdiction of a junior college
25 district. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended Acts
26 79th Leg., R.S., Ch. 1048.)

27 Sec. 501.106. AIRPORT FACILITIES OR OTHER PROJECTS BY

1 CORPORATIONS AUTHORIZED BY CERTAIN BORDER MUNICIPALITIES. (a)
2 This section applies only to a corporation authorized to be created
3 by a municipality, any part of which is located within 25 miles of
4 an international border.

5 (b) For a corporation to which this section applies, in this
6 subtitle, "project" includes the land, buildings, facilities,
7 infrastructure, and improvements that:

8 (1) the corporation's board of directors finds are
9 required or suitable for the development or expansion of airport
10 facilities; or

11 (2) are undertaken by the corporation if the
12 municipality that authorized the creation of the corporation has,
13 at the time the corporation approves the project as provided by this
14 subtitle:

15 (A) a population of less than 50,000; or

16 (B) an average rate of unemployment that is
17 greater than the state average rate of unemployment during the most
18 recent 12-month period for which data is available that precedes
19 the date the project is approved. (V.A.C.S. Art. 5190.6, Sec. 2(11)
20 (part), as amended Acts 79th Leg., R.S., Ch. 1148.)

21 Sec. 501.107. INFRASTRUCTURE PROJECTS BY CORPORATIONS
22 AUTHORIZED BY MUNICIPALITIES IN CERTAIN BORDER COUNTIES. (a) This
23 section applies only to a corporation that:

24 (1) is authorized to be created by a municipality
25 wholly or partly located in a county that:

26 (A) is bordered by the Rio Grande;

27 (B) has a population of at least 500,000; and

1 (C) has wholly or partly within its boundaries at
2 least four municipalities each of which has a population of at least
3 25,000; and

4 (2) does not support a project, as defined by this
5 subchapter, with sales and use tax revenue collected under Chapter
6 504 or 505.

7 (b) For a corporation to which this section applies, in this
8 subtitle, "project" includes expenditures found by the board of
9 directors to be required or suitable for infrastructure necessary
10 to promote or develop new or expanded business enterprises,
11 including airports, ports, and sewer or solid waste disposal
12 facilities. (V.A.C.S. Art. 5190.6, Sec. 2(11) (part), as amended
13 Acts 79th Leg., R.S., Ch. 1148.)

14 [Sections 501.108-501.150 reserved for expansion]

15 SUBCHAPTER D. CORPORATE POWERS AND LIMITATIONS RELATING TO
16 PROJECTS

17 Sec. 501.151. AUTHORITY TO FINANCE PROJECT. A corporation
18 is a constituted authority for the purpose of financing one or more
19 projects. (V.A.C.S. Art. 5190.6, Sec. 2(10) (part).)

20 Sec. 501.152. DEFINITION OF COST WITH RESPECT TO PROJECT.
21 In this subtitle, "cost," with respect to a project, means the cost
22 of the acquisition, cleanup, construction, reconstruction,
23 improvement, or expansion of a project, including:

- 24 (1) the cost of acquiring all land, rights-of-way,
25 property rights, easements, and interests;
26 (2) the cost of all machinery and equipment;
27 (3) financing charges;

- 1 (4) the cost of inventory, raw materials, and other
2 supplies;
- 3 (5) research and development costs;
- 4 (6) interest accruing before and during construction
5 and until the first anniversary of the date the construction is
6 completed, regardless of whether capitalized;
- 7 (7) necessary reserve funds;
- 8 (8) the cost of estimates, including estimates of cost
9 and revenue;
- 10 (9) the cost of engineering or legal services;
- 11 (10) the cost of plans, specifications, or surveys;
- 12 (11) other expenses necessary or incident to
13 determining the feasibility and practicability of acquiring,
14 cleaning, constructing, reconstructing, improving, and expanding
15 the project;
- 16 (12) administrative expenses; and
- 17 (13) other expenditures necessary or incident to:
 - 18 (A) acquiring, cleaning, constructing,
19 reconstructing, improving, and expanding the project;
 - 20 (B) placing the project in operation; and
 - 21 (C) financing or refinancing the project,
22 including refunding any outstanding obligations, mortgages, or
23 advances issued, made, or given by a person for a cost described by
24 this section. (V.A.C.S. Art. 5190.6, Sec. 2(4).)

25 Sec. 501.153. LEASE OR SALE OF PROJECT. (a) A corporation
26 may:

- 27 (1) lease all or any part of a project to a user, for

1 the rental and on the terms that the corporation's board of
2 directors considers advisable and not in conflict with this
3 subtitle; or

4 (2) sell, by installment payments or otherwise, and
5 convey all or any part of a project to a user for the purchase price
6 and on the terms the corporation's board of directors considers
7 advisable and not in conflict with this subtitle.

8 (b) A corporation may grant a lessee an option to purchase
9 all or any part of a project when all bonds of the corporation
10 delivered to provide those facilities have been paid or provision
11 has been made for the bonds' final payment. This subsection is
12 procedurally exclusive for authority to convey or grant an option
13 to purchase all or part of a project, and reference to another law
14 is not required. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 29.)

15 Sec. 501.154. CONVEYANCE OF PROPERTY TO INSTITUTION OF
16 HIGHER EDUCATION. With respect to a project, a corporation may
17 donate, exchange, convey, sell, or lease land, improvements, or any
18 other interest in real property, fixtures, furnishings, equipment,
19 or personal property to an institution of higher education for a
20 legal purpose of the institution, on the terms the corporation's
21 board of directors considers advisable and not in conflict with
22 this subtitle. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

23 Sec. 501.155. LOAN TO FINANCE PROJECT. (a) A corporation
24 may make a secured or unsecured loan to a user for the purpose of
25 providing temporary or permanent financing or refinancing of all or
26 part of the cost of a project, including the refunding of an
27 outstanding obligation, mortgage, or advance issued, made, or given

1 by a person for the cost of a project.

2 (b) For a loan made under this section, a corporation may
3 charge and collect interest on the terms the corporation's board of
4 directors considers advisable and not in conflict with this
5 subtitle. (V.A.C.S. Art. 5190.6, Sec. 23(a) (part).)

6 Sec. 501.156. AGREEMENT MUST BENEFIT CORPORATION. An
7 agreement relating to a project must be for the benefit of the
8 corporation. (V.A.C.S. Art. 5190.6, Sec. 28(a) (part).)

9 Sec. 501.157. DEFAULT ON AGREEMENT; ENFORCEMENT. An
10 agreement relating to a project must provide that if a default
11 occurs in the payment of the principal of or the interest or premium
12 on the bonds or in the performance of any agreement contained in a
13 proceeding, mortgage, or instrument, the payment or performance may
14 be enforced by:

15 (1) mandamus; or

16 (2) the appointment of a receiver in equity with the
17 power to:

18 (A) charge and collect rents, purchase price
19 payments, and loan payments; and

20 (B) apply the revenue from the project in
21 accordance with the resolution, mortgage, or instrument. (V.A.C.S.
22 Art. 5190.6, Sec. 28(a) (part).)

23 Sec. 501.158. PERFORMANCE AGREEMENTS. (a) A corporation
24 may not provide a direct incentive to or make an expenditure on
25 behalf of a business enterprise under a project as defined by
26 Subchapter C of this chapter or by Subchapter D, Chapter 505, unless
27 the corporation enters into a performance agreement with the

1 business enterprise.

2 (b) A performance agreement between a corporation and
3 business enterprise must:

4 (1) provide, at a minimum, for a schedule of
5 additional payroll or jobs to be created or retained and capital
6 investment to be made as consideration for any direct incentives
7 provided or expenditures made by the corporation under the
8 agreement; and

9 (2) specify the terms under which repayment must be
10 made if the business enterprise does not meet the performance
11 requirements specified in the agreement. (V.A.C.S. Art. 5190.6,
12 Sec. 40.)

13 Sec. 501.159. POWERS CONCERNING PROJECTS; JURISDICTION.

14 (a) A corporation may acquire, by construction, devise, purchase,
15 gift, lease, or otherwise, or any one or more of those methods and
16 may construct, improve, maintain, equip, and furnish one or more
17 projects undertaken by another corporation or located within this
18 state, including within the coastal waters of this state, and
19 within or partially within the limits of the authorizing unit of the
20 corporation or within the limits of another unit, if the governing
21 body of the other corporation or the unit requests the corporation
22 to exercise its powers within that unit.

23 (b) A corporation may recover the costs of an investment
24 under Subsection (a) from a unit or another corporation under a
25 contract with a limited or unlimited duration. (V.A.C.S. Art.
26 5190.6, Sec. 23(a) (part).)

27 Sec. 501.160. OWNING OR OPERATING PROJECT AS BUSINESS. (a)

1 Except as provided by Subsection (d), a corporation may not own or
2 operate a project as a business other than:

- 3 (1) as a lessor, seller, or lender; or
4 (2) according to the requirements of any trust
5 agreement securing the credit transaction.

6 (b) The user under a lease, sale, or loan agreement relating
7 to a project is considered the owner of the project for purposes of
8 ad valorem taxes, sales and use taxes, or any other taxes imposed by
9 this state or a political subdivision of this state.

10 (c) Purchasing and holding a mortgage, deed of trust, or
11 other security interest or contracting for the servicing of a
12 mortgage, deed of trust, or other security interest is not
13 considered the operation of a project.

14 (d) A corporation has all the powers necessary to own and
15 operate a project as a business if the project is a military
16 installation or military facility that has been closed or
17 realigned, including a military installation or facility closed or
18 realigned under the Defense Base Closure and Realignment Act of
19 1990 (10 U.S.C. Section 2687 note), as amended. (V.A.C.S. Art.
20 5190.6, Sec. 23(b).)

21 Sec. 501.161. CERTAIN ECONOMIC INCENTIVES PROHIBITED. (a)
22 In this section, "related party" means a person who owns at least 80
23 percent of the business enterprise to which the sales and use tax
24 would be rebated as part of an economic incentive.

25 (b) Notwithstanding any other provision of this subtitle, a
26 corporation may not offer to provide an economic incentive for a
27 business enterprise whose business consists primarily of

1 purchasing taxable items using a resale certificate and then
2 reselling those items to a related party. (V.A.C.S. Art. 5190.6,
3 Sec. 42.)

4 Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING. A
5 corporation may spend tax revenue received under this subtitle for
6 job training offered through a business enterprise only if the
7 business enterprise has committed in writing to:

8 (1) create new jobs that pay wages that are at least
9 equal to the prevailing wage for the applicable occupation in the
10 local labor market area; or

11 (2) increase its payroll to pay wages that are at least
12 equal to the prevailing wage for the applicable occupation in the
13 local labor market area. (V.A.C.S. Art. 5190.6, Sec. 38.)

14 [Sections 501.163-501.200 reserved for expansion]

15 SUBCHAPTER E. CORPORATE POWERS AND LIMITATIONS RELATING TO BONDS

16 Sec. 501.201. AUTHORITY TO ISSUE BONDS. (a) A corporation
17 may issue bonds to defray all or part of the cost of a project,
18 regardless of whether the bonds are wholly or partly exempt from
19 federal income taxation.

20 (b) Except as limited by this subtitle or rules and
21 guidelines of the economic development office, a corporation has
22 full authority with respect to bonds.

23 (c) Except as otherwise provided by this subtitle, a
24 corporation may issue bonds under this subtitle without obtaining
25 the consent or approval of any department, division, or agency of
26 this state, other than the attorney general under Chapter 1202,
27 Government Code. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 25(d))

1 (part), 30 (part).)

2 Sec. 501.202. TERMS. Bonds issued by a corporation must be
3 dated and must mature in not more than 40 years. (V.A.C.S. Art.
4 5190.6, Sec. 25(a) (part).)

5 Sec. 501.203. SECURITIES COMMISSIONER PERMIT TO SELL
6 SECURITIES REQUIRED. A corporation may not sell or offer for sale
7 bonds or other securities until the securities commissioner grants
8 a permit authorizing the corporation to offer and sell the bonds or
9 other securities under the registration provisions of The
10 Securities Act (Article 581-1 et seq., Vernon's Texas Civil
11 Statutes), except as exempted from registration by rule or order of
12 the State Securities Board. Appeal from an adverse decision of the
13 securities commissioner or the State Securities Board is under the
14 administrative procedure law, Chapter 2001, Government Code. The
15 substantial evidence rule applies in an appeal under this
16 subsection. (V.A.C.S. Art. 5190.6, Sec. 24(d).)

17 Sec. 501.204. AUTHORIZING UNIT'S APPROVAL OF BONDS. (a) A
18 corporation may not deliver bonds, including refunding bonds,
19 unless the governing body of the corporation's authorizing unit
20 adopts a resolution, not earlier than the 60th day before the date
21 the bonds are delivered, specifically approving the corporation's
22 resolution providing for the issuance of the bonds.

23 (b) If the corporation is authorized to be created by a
24 county alliance, the resolution required by Subsection (a) must be
25 adopted by the commissioners courts of at least three-fifths of the
26 members of the county alliance. (V.A.C.S. Art. 5190.6, Sec.
27 25(f).)

1 Sec. 501.205. BOND COUNSEL AND FINANCIAL ADVISORS. Bond
2 counsel and financial advisors participating in a bond issue must
3 be mutually acceptable to the corporation and the user. (V.A.C.S.
4 Art. 5190.6, Sec. 24(e) (part).)

5 Sec. 501.206. MONEY USED TO PAY BONDS. The principal of and
6 interest on bonds issued by a corporation are payable only from the
7 money provided for that payment and from the revenue of the project
8 or projects for which the bonds were authorized. (V.A.C.S. Art.
9 5190.6, Secs. 22 (part), 25(a) (part).)

10 Sec. 501.207. BONDS NOT DEBT OF STATE OR AUTHORIZING UNIT.
11 (a) Bonds issued under this subtitle are not a debt or pledge of the
12 faith and credit of this state, the authorizing unit of the
13 corporation issuing the bonds, or any other political corporation,
14 subdivision, or agency of this state.

15 (b) The revenue bonds issued under this subtitle must
16 contain on their face a statement to the effect that:

17 (1) neither this state, the authorizing unit of the
18 corporation issuing the bonds, nor any other political corporation,
19 subdivision, or agency of this state is obligated to pay the
20 principal of or the interest on the bonds; and

21 (2) neither the faith and credit nor the taxing power
22 of this state, the authorizing unit of the corporation issuing the
23 bonds, or any other political corporation, subdivision, or agency
24 of this state is pledged to the payment of the principal of or the
25 interest on the bonds. (V.A.C.S. Art. 5190.6, Sec. 22 (part).)

26 Sec. 501.208. BOND SECURITY; DEFAULT. (a) The principal of
27 and interest on any bonds issued by a corporation shall be secured

1 by a pledge of the revenues and receipts derived by the corporation
2 from the lease or sale of the project financed by the bonds or from
3 the loan made by the corporation with respect to the project
4 financed or refinanced by the bonds.

5 (b) As security for the payment of the principal of and
6 interest on any bonds issued by a corporation and any agreements
7 made in connection with the issuance of bonds, the corporation may:

8 (1) mortgage and pledge any or all of the corporation's
9 projects or any part of a project, including the project financed or
10 refinanced and any enlargements of and additions to the project,
11 owned before or acquired after the time of the mortgage or pledge;
12 and

13 (2) assign any mortgage and repledge any security
14 conveyed to the corporation to secure any loan made by the
15 corporation, and pledge the revenues and receipts from the assigned
16 mortgage or security.

17 (c) The resolution authorizing the issuance of bonds and any
18 mortgage covering all or part of the project financed may include
19 any agreement or provision that the board of directors considers
20 advisable and not in conflict with this subtitle and that relates
21 to:

22 (1) the maintenance of the project covered by the
23 bonds or mortgage;

24 (2) the fixing and collection of rents;

25 (3) purchase price payments;

26 (4) loan payments;

27 (5) the creation and maintenance of special funds from

1 those revenues; or

2 (6) the rights and remedies available in the event of a
3 default.

4 (d) A mortgage to secure bonds may also provide that, in the
5 event of a default in the payment of the bonds or a violation of
6 another agreement contained in the mortgage, the mortgage may be
7 foreclosed and the mortgaged property may be sold in any manner
8 permitted by law. The mortgage may provide that a trustee under the
9 mortgage or the holder of any of the bonds secured by the mortgage
10 may purchase property at a foreclosure sale if the trustee or holder
11 is the highest bidder.

12 (e) A pledge, agreement, or mortgage made for the benefit or
13 security of any of the corporation's bonds continues in effect
14 until the principal of and interest on the bonds benefited or
15 secured by the pledge, agreement, or mortgage have been fully paid.
16 (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 25(e) (part), 28(b).)

17 Sec. 501.209. TRUST AGREEMENT. (a) Bonds issued under this
18 subtitle may be secured by a trust agreement between the
19 corporation and a trust company or bank having the powers of a trust
20 company. The trust company or bank may be located in or outside of
21 this state.

22 (b) The trust agreement may:

23 (1) pledge or assign the lease, sale, or loan revenues
24 to be received with respect to a project from a lessee, purchaser,
25 or borrower for the payment of the principal of and interest and any
26 premium on the bonds as the bonds become due and payable;

27 (2) provide for the creation and maintenance of

1 reserves for a purpose described by Subdivision (1);

2 (3) state the rights and remedies of the bondholders
3 and the trustee;

4 (4) restrict the individual right of action by
5 bondholders in a manner that is customary in trust agreements or
6 trust indentures securing bonds and debentures of private
7 corporations; and

8 (5) include any additional provision that the
9 corporation considers reasonable and proper for the security of the
10 bondholders.

11 (c) The trust agreement or a resolution approving the
12 issuance of the bonds may provide for the protection and
13 enforcement of the rights and remedies of the bondholders as may be
14 reasonable and proper and not in violation of law, including
15 covenants providing the duties relating to:

16 (1) the acquisition of property and the construction,
17 improvement, maintenance, repair, operation, and insurance of the
18 project in connection with which the bonds are authorized; and

19 (2) the custody, protection, and application of all
20 money.

21 (d) A bank or trust company incorporated under the laws of
22 this state that acts as depository of the bond proceeds or of
23 revenues may furnish indemnifying bonds or pledge securities as
24 required by the corporation.

25 (e) All expenses incurred in carrying out the trust
26 agreement may be treated as a part of the cost of operating the
27 project. (V.A.C.S. Art. 5190.6, Sec. 27.)

1 Sec. 501.210. FINANCIAL ASSURANCE OR RESPONSIBILITY
2 REQUIREMENTS FOR CERTAIN PROJECTS. (a) The resolution or mortgage
3 described by Section 501.208(c) may contain any agreement or
4 provision for satisfying the financial assurance or responsibility
5 requirements applicable to a project for which a permit is required
6 under Chapter 361, Health and Safety Code, or Chapter 27, Water
7 Code, including a requirement relating to construction, proper
8 operation, liability coverage, emergency response capability, well
9 plugging, closure, and post-closure care.

10 (b) Evidence of the passage of a resolution by a governing
11 body approving or agreeing to approve the issuance of bonds for the
12 purpose of satisfying the financial assurance or responsibility
13 requirements applicable to the project is an adequate demonstration
14 that sufficient financial resources will be available to comply
15 with all existing financial assurance or responsibility
16 requirements. (V.A.C.S. Art. 5190.6, Sec. 25(e) (part).)

17 Sec. 501.211. USE OF BOND PROCEEDS. (a) The proceeds of
18 the bonds of each issue shall be:

19 (1) used to pay or make a loan in the amount of all or
20 part of the cost of the project or projects for which the bonds were
21 authorized; and

22 (2) disbursed in the manner and under any restrictions
23 provided in the resolution authorizing the issuance of the bonds or
24 in any trust agreement securing the bonds.

25 (b) Bond proceeds may be used to:

26 (1) pay all costs incurred in issuing the bonds;

27 (2) pay interest on the bonds for any time determined

1 by the board of directors of the corporation issuing the bonds; and
2 (3) establish reserve funds and sinking funds for the
3 bonds.

4 (c) If the proceeds of the bonds of any series issued for a
5 project exceed the cost of the project for which the bonds were
6 issued, the surplus shall be:

7 (1) deposited to the credit of the sinking fund for the
8 bonds; or

9 (2) used to purchase bonds in the open market.
10 (V.A.C.S. Art. 5190.6, Sec. 25(c).)

11 Sec. 501.212. INTERIM BONDS. (a) Before the preparation of
12 definitive bonds, the corporation may, under like restrictions,
13 issue interim bonds that may be exchanged for definitive bonds when
14 the definitive bonds are executed and available for delivery.

15 (b) The corporation may issue interim bonds with or without
16 coupons. (V.A.C.S. Art. 5190.6, Sec. 25(d) (part).)

17 Sec. 501.213. REFUNDING BONDS. (a) A corporation may
18 provide by resolution for the issuance of refunding bonds:

19 (1) to refund outstanding bonds issued under this
20 subtitle for a project, including the payment of any redemption
21 premium on the bonds and the interest accrued or to accrue to the
22 date of redemption; and

23 (2) if considered advisable by the corporation,
24 additionally to finance improvements, extensions, or enlargements
25 to the project for which the bonds being refunded were issued or for
26 another project.

27 (b) The provisions of this subtitle relating to other bonds

1 govern the issuance, maturities, and other details of the refunding
2 bonds, the rights of the holders of the refunding bonds, and the
3 rights, duties, and obligations of the corporation with respect to
4 the same to the extent those provisions may be applicable.

5 (c) The corporation may issue the refunding bonds in
6 exchange for outstanding bonds or may sell the refunding bonds and
7 use the proceeds to redeem outstanding bonds. (V.A.C.S. Art.
8 5190.6, Sec. 26.)

9 Sec. 501.214. SALE OR EXCHANGE OF BONDS. With respect to a
10 project, a corporation may:

11 (1) sell bonds; or

12 (2) exchange bonds for property, labor, services,
13 material, or equipment comprising a project or incidental to the
14 acquisition of a project. (V.A.C.S. Art. 5190.6, Sec. 23(a)
15 (part).)

16 [Sections 501.215-501.250 reserved for expansion]

17 SUBCHAPTER F. ADMINISTRATION BY ECONOMIC DEVELOPMENT OFFICE

18 Sec. 501.251. STATE STANDARDS FOR PROJECT ELIGIBILITY. The
19 economic development office shall adopt rules providing minimum
20 standards for project eligibility. (V.A.C.S. Art. 5190.6, Sec.
21 24(a) (part).)

22 Sec. 501.252. STATE STANDARDS AND GUIDELINES FOR LEASE,
23 SALE, OR LOAN AGREEMENTS. (a) The economic development office
24 shall adopt rules:

25 (1) providing minimum standards for lease, sale, and
26 loan agreements entered into under this subtitle; and

27 (2) providing guidelines with respect to the business

1 experience, financial resources, and responsibilities of the
2 lessee, purchaser, or borrower under a lease, sale, or loan
3 agreement entered into under this subtitle.

4 (b) The economic development office may adopt rules
5 governing the terms of a loan made by a corporation to a bank or
6 other lending institution the proceeds of which are reloaned as
7 permanent or temporary financing of a project. (V.A.C.S. Art.
8 5190.6, Secs. 24(a) (part), (f) (part).)

9 Sec. 501.253. RULES FOR SMALL BUSINESS PROGRAMS. The
10 economic development office shall adopt rules governing programs
11 for small businesses receiving loans guaranteed wholly or partly by
12 the United States Small Business Administration or another federal
13 agency. (V.A.C.S. Art. 5190.6, Sec. 24(f) (part).)

14 Sec. 501.254. FILING OF RULES AND GUIDELINES WITH SECRETARY
15 OF STATE. Rules and guidelines adopted by the economic development
16 office and amendments to the rules and guidelines take effect only
17 after the filing of the rules and guidelines or amendments with the
18 secretary of state. (V.A.C.S. Art. 5190.6, Sec. 24(a) (part).)

19 Sec. 501.255. APPROVAL OF LEASE, SALE, OR LOAN AGREEMENT.

20 (a) A lease, sale, or loan agreement entered into under this
21 subtitle must be approved by the economic development office. The
22 economic development office may not approve an agreement unless the
23 office affirmatively finds that the project sought to be financed
24 furthers the public purposes of this subtitle.

25 (b) The corporation may appeal an adverse ruling or decision
26 of the economic development office under Subsection (a) to a
27 district court of Travis County. The substantial evidence rule

1 applies in an appeal under this subsection.

2 (c) A corporation:

3 (1) may enter into a lease, sale, or loan agreement
4 under this subtitle without obtaining the consent or approval of
5 any department, division, or agency of this state except as
6 otherwise provided by this subtitle; and

7 (2) has full authority with respect to a lease, sale,
8 or loan agreement, except as limited by this subtitle or by rules
9 and guidelines of the economic development office. (V.A.C.S. Art.
10 5190.6, Secs. 24(a) (part), 25(d) (part), 30 (part).)

11 Sec. 501.256. APPROVAL OF BONDS BY ECONOMIC DEVELOPMENT
12 OFFICE. (a) A corporation may submit a transcript of proceedings
13 in connection with the issuance of bonds to the economic
14 development office and request that the office approve the bonds. A
15 corporation shall include a nonrefundable filing fee with the
16 request. The office shall set the amount of the fee at a reasonable
17 amount that is not less than \$500 or more than \$25,000.

18 (b) If the economic development office refuses to approve
19 the bond issue solely on the basis of law, the corporation may seek
20 a writ of mandamus from the Texas Supreme Court, and for this
21 purpose the executive director of the economic development office
22 is considered a state officer under Section 22.002, Government
23 Code. (V.A.C.S. Art. 5190.6, Sec. 24(b).)

24 Sec. 501.257. FILING OF FEE SCHEDULE AND BOND PROCEDURES.
25 The economic development office by rule shall require a corporation
26 to file fee schedules and bond procedures. (V.A.C.S. Art. 5190.6,
27 Sec. 24(e) (part).)

1 Sec. 501.258. DELEGATION OF AUTHORITY. The economic
2 development office may delegate to the executive director of the
3 office the authority to approve a lease, sale, or loan agreement
4 made under this subtitle or bonds issued by a corporation or any
5 documents submitted as provided in this subtitle. (V.A.C.S. Art.
6 5190.6, Sec. 24(c).)

7 [Sections 501.259-501.300 reserved for expansion]

8 SUBCHAPTER G. AMENDMENT OR RESTATEMENT OF
9 CERTIFICATE OF FORMATION

10 Sec. 501.301. AMENDMENT BY BOARD OF DIRECTORS. (a) The
11 board of directors of a corporation at any time may file with the
12 governing body of the corporation's authorizing unit a written
13 application requesting that the authorizing unit approve an
14 amendment to the certificate of formation.

15 (b) The application must specify the proposed amendment.
16 The board of directors shall amend the certificate of formation in
17 accordance with this subchapter if the governing body of the
18 authorizing unit by resolution:

19 (1) determines that it is advisable to adopt the
20 amendment;

21 (2) authorizes the adoption of the amendment; and

22 (3) approves the form of the amendment. (V.A.C.S.
23 Art. 5190.6, Sec. 17(a).)

24 Sec. 501.302. AMENDMENT BY UNIT. The governing body of the
25 authorizing unit of a corporation, at the unit's sole discretion,
26 may in accordance with this subchapter amend the corporation's
27 certificate of formation at any time by:

- 1 (1) adopting the amendment by resolution; and
2 (2) delivering the certificate of amendment to the
3 secretary of state. (V.A.C.S. Art. 5190.6, Sec. 17(b).)

4 Sec. 501.303. AMENDMENT TO COUNTY ALLIANCE CORPORATION'S
5 CERTIFICATE OF FORMATION. An amendment to the certificate of
6 formation of a county alliance corporation may not be adopted
7 unless approved by the governing body of each member of the county
8 alliance that authorized the creation of the corporation.
9 (V.A.C.S. Art. 5190.6, Sec. 17(c).)

10 Sec. 501.304. CONTENTS OF CERTIFICATE OF AMENDMENT. The
11 certificate of amendment must:

- 12 (1) state the name of the corporation;
13 (2) if the amendment alters a provision of the
14 certificate of formation, identify by reference or describe the
15 altered provision and include the provision's text as amended;
16 (3) if the amendment is an addition to the certificate
17 of formation, state that fact and include the text of each provision
18 added; and
19 (4) state that the amendment was adopted or approved
20 by the governing body of the authorizing unit and give the date the
21 governing body adopted or approved the amendment. (V.A.C.S. Art.
22 5190.6, Sec. 18 (part).)

23 Sec. 501.305. EXECUTION AND VERIFICATION OF CERTIFICATE OF
24 AMENDMENT. (a) A certificate of amendment shall be executed:

- 25 (1) on behalf of the corporation by the president or a
26 vice president of the corporation and by the secretary or an
27 assistant secretary of the corporation; or

1 (2) by the presiding officer of the governing body of
2 the corporation's authorizing unit and by the secretary or clerk of
3 the governing body.

4 (b) One of the officers who signs the certificate of
5 amendment shall verify the certificate of amendment. (V.A.C.S.
6 Art. 5190.6, Sec. 18 (part).)

7 Sec. 501.306. DELIVERY AND FILING OF CERTIFICATE OF
8 AMENDMENT. (a) Three originals of the certificate of amendment
9 shall be delivered to the secretary of state.

10 (b) If the secretary of state determines that the
11 certificate of amendment conforms to this subchapter and on receipt
12 of a \$25 fee, the secretary of state shall:

13 (1) endorse the word "Filed" and the date of the filing
14 on each original of the certificate of amendment;

15 (2) file one of the original certificates of amendment
16 in the secretary of state's office;

17 (3) issue two certificates evidencing the filing of
18 the certificate of amendment;

19 (4) attach to each certificate evidencing the filing
20 of the certificate of amendment; and

21 (5) deliver a certificate evidencing the filing of the
22 certificate of amendment and the attached certificate of amendment
23 to:

24 (A) the corporation or the corporation's
25 representative; and

26 (B) the governing body of the corporation's
27 authorizing unit.

1 (c) On the issuance of the certificate evidencing the filing
2 of the certificate of amendment, the amendment becomes effective
3 and the certificate of formation is amended accordingly. (V.A.C.S.
4 Art. 5190.6, Secs. 19(a), (b), (c).)

5 Sec. 501.307. SUITS OR RIGHTS NOT AFFECTED. (a) An
6 amendment to a corporation's certificate of formation does not
7 affect:

8 (1) any existing cause of action in favor of or against
9 the corporation;

10 (2) any pending suit to which the corporation is a
11 party; or

12 (3) the existing rights of any person.

13 (b) If a corporation's name is changed by amendment to the
14 certificate of formation, a suit brought by or against the
15 corporation under its former name does not abate for that reason.
16 (V.A.C.S. Art. 5190.6, Sec. 19(d).)

17 Sec. 501.308. RESTATED CERTIFICATE OF FORMATION. A
18 corporation may authorize, execute, and file a restated certificate
19 of formation by following the procedure to amend the certificate of
20 formation provided by this subchapter, including obtaining the
21 approval of the governing body of the corporation's authorizing
22 unit. (V.A.C.S. Art. 5190.6, Sec. 20(a) (part).)

23 Sec. 501.309. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT.
24 (a) A corporation may, without making any additional amendment,
25 restate the entire text of the certificate of formation as amended
26 or supplemented by all certificates evidencing the filing of a
27 certificate of amendment previously issued by the secretary of

1 state.

2 (b) The introductory paragraph of a restatement under this
3 section must contain a statement that the restatement:

4 (1) accurately copies the certificate of formation and
5 all amendments to the certificate of formation that are in effect;
6 and

7 (2) does not contain any change to the certificate of
8 formation. (V.A.C.S. Art. 5190.6, Secs. 20(a) (part), (b) (part).)

9 Sec. 501.310. RESTATEMENT WITH ADDITIONAL AMENDMENT. (a)
10 A corporation may:

11 (1) restate the entire text of the certificate of
12 formation as amended or supplemented by all certificates evidencing
13 the filing of a certificate of amendment previously issued by the
14 secretary of state; and

15 (2) as part of the restatement, make additional
16 amendments to the certificate of formation.

17 (b) A restatement under this section must:

18 (1) state that each additional amendment to the
19 certificate of formation conforms to this subtitle;

20 (2) contain any statement required by this subtitle
21 for the certificate of amendment, except that the full text of an
22 additional amendment is not required to be set out other than in the
23 restatement itself;

24 (3) contain a statement that:

25 (A) the restatement is an accurate copy of the
26 certificate of formation and all amendments to the certificate of
27 formation that are in effect and all additional amendments made to

1 the certificate of formation; and

2 (B) the restatement does not contain any other
3 change to the certificate of formation; and

4 (4) restate the text of the entire certificate of
5 formation as amended or supplemented by all certificates evidencing
6 the filing of a certificate of amendment previously issued by the
7 secretary of state and as additionally amended by the restated
8 certificate of formation. (V.A.C.S. Art. 5190.6, Secs. 20(a)
9 (part), (c) (part).)

10 Sec. 501.311. CHANGE IN CERTAIN INFORMATION NOT AMENDMENT.
11 For purposes of restating the certificate of formation under
12 Sections 501.309 and 501.310, substituting the current number,
13 names, and addresses of the directors for similar information of
14 the initial board of directors or omitting the name and address of
15 each organizer is not an amendment to or change in the certificate
16 of formation. (V.A.C.S. Art. 5190.6, Secs. 20(b) (part), (c)
17 (part).)

18 Sec. 501.312. EXECUTION AND VERIFICATION OF RESTATED
19 CERTIFICATE OF FORMATION. (a) Originals of the restated
20 certificate of formation shall be executed on behalf of the
21 corporation by the president or a vice president of the corporation
22 and by the secretary or an assistant secretary of the corporation.

23 (b) One of the officers who signs the restated certificate
24 of formation shall verify the restated certificate. (V.A.C.S. Art.
25 5190.6, Sec. 20(d) (part).)

26 Sec. 501.313. DELIVERY AND FILING OF RESTATED CERTIFICATE
27 OF FORMATION. (a) Three originals of the restated certificate of

1 formation shall be delivered to the secretary of state.

2 (b) If the secretary of state determines that the restated
3 certificate of formation conforms to law and on receipt of a \$25
4 fee, the secretary of state shall:

5 (1) endorse the word "Filed" and the date of the filing
6 on each original of the restated certificate of formation;

7 (2) file one of the original restated certificates of
8 formation in the secretary of state's office;

9 (3) issue two certificates evidencing the filing of
10 the restated certificate of formation;

11 (4) attach to each certificate evidencing the filing
12 of the restated certificate of formation an original of the
13 restated certificate of formation; and

14 (5) deliver a certificate evidencing the filing of the
15 restated certificate of formation and the attached restated
16 certificate of formation to:

17 (A) the corporation or the corporation's
18 representative; and

19 (B) the governing body of:

20 (i) the corporation's authorizing unit; or

21 (ii) any county in the county alliance that
22 authorized the creation of the corporation, for a county alliance
23 corporation.

24 (c) The governing body of a county to which a certificate
25 evidencing the filing of the restated certificate of formation and
26 the attached restated certificate of formation are delivered under
27 Subsection (b)(5)(B)(ii) shall provide photocopies of the

1 certificate evidencing the filing of the restated certificate of
2 formation and the attached restated certificate of formation to
3 each other member of the county alliance. (V.A.C.S. Art. 5190.6,
4 Secs. 20(d) (part), (e).)

5 Sec. 501.314. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING
6 FILING OF RESTATED CERTIFICATE OF FORMATION. On the issuance of the
7 certificate evidencing the filing of the restated certificate of
8 formation by the secretary of state:

9 (1) the original certificate of formation and all
10 amendments to the original certificate of formation are superseded;
11 and

12 (2) the restated certificate of formation becomes the
13 certificate of formation of the corporation. (V.A.C.S. Art.
14 5190.6, Sec. 20(f).)

15 [Sections 501.315-501.350 reserved for expansion]

16 SUBCHAPTER H. REGISTERED OFFICE AND AGENT; SERVICE OF PROCESS

17 Sec. 501.351. REGISTERED OFFICE AND AGENT. (a) A
18 corporation shall continuously maintain in this state a registered
19 office and registered agent.

20 (b) A corporation's registered office may, but is not
21 required to be, the same as the corporation's principal office.

22 (c) A corporation's registered agent may be:

23 (1) an individual who is a resident of this state and
24 whose business office is the same as the corporation's registered
25 office; or

26 (2) a domestic or foreign for-profit or nonprofit
27 corporation that:

1 (A) is authorized to transact business or to
2 conduct affairs in this state; and

3 (B) has a principal or business office that is
4 the same as the corporation's registered office. (V.A.C.S. Art.
5 5190.6, Sec. 8.)

6 Sec. 501.352. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A
7 corporation may change its registered office or registered agent by
8 filing in the office of the secretary of state a statement
9 declaring:

10 (1) the name of the corporation;

11 (2) the postal mailing address of the corporation's
12 registered office at the time of filing;

13 (3) the postal address to which the registered office
14 is to be changed, if the postal mailing address of the corporation's
15 registered office is to be changed;

16 (4) the name of the corporation's registered agent at
17 the time of filing;

18 (5) the name of the corporation's successor registered
19 agent, if the corporation's registered agent is to be changed;

20 (6) that the postal mailing address of the
21 corporation's registered office and the postal mailing address of
22 the business office of the corporation's registered agent as
23 changed will be the same; and

24 (7) that the change was authorized by:

25 (A) the corporation's board of directors; or

26 (B) an officer of the corporation authorized by
27 the corporation's board of directors to make the change.

1 (b) Two originals of the statement shall be:

2 (1) executed on behalf of the corporation by the
3 president or a vice president of the corporation;

4 (2) verified by the executing officer; and

5 (3) delivered to the secretary of state.

6 (c) If the secretary of state determines that the statement
7 conforms to this section and on receipt of a \$25 fee, the secretary
8 of state shall:

9 (1) endorse the word "Filed" and the date of the filing
10 on each original of the statement;

11 (2) file one of the original statements in the
12 secretary of state's office; and

13 (3) return the other original statement to the
14 corporation or the corporation's representative.

15 (d) A change made by the statement becomes effective on the
16 filing of the statement by the secretary of state. (V.A.C.S. Art.
17 5190.6, Secs. 9(a), (b), (c).)

18 Sec. 501.353. RESIGNATION OF REGISTERED AGENT. (a) A
19 corporation's registered agent may resign by:

20 (1) giving written notice to the corporation at the
21 corporation's last known address; and

22 (2) giving three originals of the written notice to
23 the secretary of state not later than the 10th day after the date
24 the notice is mailed or delivered to the corporation.

25 (b) The notice of resignation must include:

26 (1) the corporation's last known address;

27 (2) a statement that written notice of the resignation

1 was given to the corporation; and

2 (3) the date on which the written notice of
3 resignation was given to the corporation.

4 (c) If the secretary of state determines that the notice of
5 resignation conforms to this section, the secretary of state shall:

6 (1) endorse the word "Filed" and the date of the filing
7 on each original of the notice of resignation;

8 (2) file one of the original notices of resignation in
9 the secretary of state's office;

10 (3) return one original notice of resignation to the
11 resigning registered agent; and

12 (4) return one original notice of resignation to the
13 corporation at the corporation's last known address shown in the
14 notice.

15 (d) The appointment of a registered agent terminates on the
16 31st day after the date the secretary of state receives the notice
17 of resignation that complies with this section. (V.A.C.S. Art.
18 5190.6, Secs. 9(d), (e).)

19 Sec. 501.354. AGENTS FOR SERVICE. (a) The president, each
20 vice president, and the registered agent of a corporation are the
21 corporation's agents on whom a process, notice, or demand required
22 or permitted by law to be served on the corporation may be served.

23 (b) If a corporation does not appoint or maintain a
24 registered agent in this state or if the corporation's registered
25 agent cannot with reasonable diligence be found at the registered
26 office, the secretary of state is an agent of the corporation on
27 whom a process, notice, or demand described by Subsection (a) may be

1 served.

2 (c) Service of a process, notice, or demand on the secretary
3 of state is made by delivering two copies of the process, notice, or
4 demand to the secretary of state, the deputy secretary of state, or
5 a clerk in charge of the corporation department of the secretary of
6 state's office. The secretary of state shall immediately forward
7 by registered mail one copy of the process, notice, or demand to the
8 corporation at the corporation's registered office.

9 (d) Service made on the secretary of state under this
10 section is returnable not earlier than the 30th day after the date
11 of service.

12 (e) The secretary of state shall keep a record of each
13 process, notice, and demand served on the secretary of state under
14 this subtitle and shall include in the record the time of the
15 service and the secretary of state's action in response to the
16 service. (V.A.C.S. Art. 5190.6, Sec. 10.)

17 [Sections 501.355-501.400 reserved for expansion]

18 SUBCHAPTER I. ALTERATION OR TERMINATION OF CORPORATION

19 Sec. 501.401. ALTERATION OR TERMINATION BY AUTHORIZING
20 UNIT. (a) At any time a corporation's authorizing unit, in its
21 sole discretion, may in accordance with this subtitle:

22 (1) alter the corporation's structure, organization,
23 programs, or activities; or

24 (2) terminate the existence of the corporation.

25 (b) The authority of an authorizing unit under this section
26 is limited only by the law of this state on the impairment of
27 contracts entered into by the corporation.

1 (c) An authorizing unit may make an alteration or may
2 terminate the corporation's existence only by a written resolution
3 of the authorizing unit's governing body. (V.A.C.S. Art. 5190.6,
4 Sec. 34.)

5 Sec. 501.402. TERMINATION OF CORPORATION ON COMPLETION OF
6 PURPOSE. The board of directors of a corporation, with the approval
7 by written resolution of the corporation's authorizing unit, shall
8 terminate the corporation's existence as provided by this subtitle
9 if the board by resolution determines that:

10 (1) the purposes for which the corporation was formed
11 have been substantially fulfilled; and

12 (2) all bonds issued by the corporation have been
13 fully paid. (V.A.C.S. Art. 5190.6, Secs. 23(a) (part), 35.)

14 Sec. 501.403. EXECUTION OF CERTIFICATE OF TERMINATION. A
15 certificate of termination shall be executed:

16 (1) on behalf of the corporation by the president or a
17 vice president of the corporation and by the secretary or an
18 assistant secretary of the corporation; or

19 (2) by the presiding officer of the governing body of
20 the corporation's authorizing unit and the secretary or clerk of
21 the governing body. (V.A.C.S. Art. 5190.6, Sec. 36(a) (part).)

22 Sec. 501.404. DELIVERY AND FILING OF CERTIFICATE OF
23 TERMINATION. (a) Three originals of the certificate of
24 termination shall be delivered to the secretary of state.

25 (b) If the secretary of state determines that the
26 certificate of termination conforms to this subtitle and on receipt
27 of a \$25 fee, the secretary of state shall:

1 (1) endorse the word "Filed" and the date of the filing
2 on each original of the certificate of termination;

3 (2) file one of the original certificates of
4 termination in the secretary of state's office;

5 (3) issue two certificates evidencing the filing of
6 the certificate of termination;

7 (4) attach to each certificate evidencing the filing
8 of the certificate of termination an original of the certificate of
9 termination; and

10 (5) deliver a certificate evidencing the filing of the
11 certificate of termination and the attached certificate of
12 termination to:

13 (A) the representative of the terminated
14 corporation; and

15 (B) the governing body of the terminated
16 corporation's authorizing unit. (V.A.C.S. Art. 5190.6, Secs. 36(a)
17 (part), (b) (part).)

18 Sec. 501.405. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING
19 FILING OF CERTIFICATE OF TERMINATION. The corporate existence ends
20 on the issuance of the certificate evidencing the filing of the
21 certificate of termination except for the purpose of:

22 (1) any suit or other proceeding; and

23 (2) appropriate corporate action by a director or
24 officer under this subtitle. (V.A.C.S. Art. 5190.6, Sec. 36(b)
25 (part).)

26 Sec. 501.406. ASSETS ON TERMINATION. On termination the
27 title to all funds and property owned by the corporation is

1 transferred to the corporation's authorizing unit. (V.A.C.S. Art.
2 5190.6, Sec. 36(c).)

3 Sec. 501.407. TERMINATION WITH TRANSFER OF ASSETS TO TYPE A
4 CORPORATION. On approval of the governing bodies of each unit and
5 corporation involved, a corporation that is not a Type A
6 corporation may transfer all of the corporation's assets to a Type A
7 corporation and terminate its existence as provided by this
8 subtitle. (V.A.C.S. Art. 5190.6, Sec. 4A(1).)

9 CHAPTER 502. PROVISIONS APPLICABLE TO TYPE A AND
10 TYPE B CORPORATIONS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 502.001. APPLICABILITY OF CHAPTER

13 [Sections 502.002-502.050 reserved for expansion]

14 SUBCHAPTER B. FINANCIAL PROVISIONS

15 Sec. 502.051. WRITTEN CONTRACT REQUIRED FOR BUSINESS

16 RECRUITMENT OR DEVELOPMENT

17 [Sections 502.052-502.100 reserved for expansion]

18 SUBCHAPTER C. TRAINING REQUIREMENTS

19 Sec. 502.101. TRAINING REGARDING OPERATION OF

20 CORPORATION

21 Sec. 502.102. PROVISION OF TRAINING SEMINAR

22 Sec. 502.103. PROOF OF COMPLIANCE

23 [Sections 502.104-502.150 reserved for expansion]

24 SUBCHAPTER D. REPORTING REQUIREMENTS

25 Sec. 502.151. REPORT TO COMPTROLLER

26 Sec. 502.152. NOTICE OF FAILURE TO REPORT

27 Sec. 502.153. REPORT TO LEGISLATURE

1 CHAPTER 502. PROVISIONS APPLICABLE TO TYPE A AND

2 TYPE B CORPORATIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 502.001. APPLICABILITY OF CHAPTER. This chapter
5 applies only to Type A and Type B corporations. (New.)

6 [Sections 502.002-502.050 reserved for expansion]

7 SUBCHAPTER B. FINANCIAL PROVISIONS

8 Sec. 502.051. WRITTEN CONTRACT REQUIRED FOR BUSINESS
9 RECRUITMENT OR DEVELOPMENT. (a) Except under a written contract
10 approved by the corporation's board of directors, a corporation may
11 not pay compensation, including a commission or fee, or another
12 thing of value to a broker, agent, or other third party who:

13 (1) is involved in business recruitment or
14 development; and

15 (2) is not an employee of the corporation.

16 (b) A corporation that violates Subsection (a) is liable to
17 this state for a civil penalty in an amount not to exceed \$10,000.

18 (c) The attorney general may bring an action to recover the
19 civil penalty in a district court in Travis County or the county in
20 which the violation occurred. (V.A.C.S. Art. 5190.6, Sec. 41.)

21 [Sections 502.052-502.100 reserved for expansion]

22 SUBCHAPTER C. TRAINING REQUIREMENTS

23 Sec. 502.101. TRAINING REGARDING OPERATION OF CORPORATION.

24 (a) At least once in each 24-month period, the following persons
25 associated with a corporation shall attend a training seminar
26 regarding the operation of a corporation created under this
27 subtitle:

1 (1) the municipal attorney, administrator, or clerk of
2 the municipality that authorized the creation of the corporation;
3 and

4 (2) the corporation's executive director or other
5 person responsible for the corporation's daily administration.

6 (b) The training seminar must provide at least six hours of
7 instruction on topics relating to the legal and proper operation of
8 a corporation created under this subtitle.

9 (c) The training seminar must be held at least four times
10 each calendar year in a different geographical region of this
11 state.

12 (d) A corporation may spend corporate revenue to pay for
13 required attendance at the training seminar. (V.A.C.S. Art.
14 5190.6, Secs. 39(a), (b) (part), (d), (e) (part).)

15 Sec. 502.102. PROVISION OF TRAINING SEMINAR. (a) A
16 training seminar under Section 502.101 must be provided by a
17 statewide organization representing corporations created under
18 this subtitle, except that if the economic development office
19 determines that no statewide organization is able to provide a
20 seminar as required by Section 502.101, the office, in conjunction
21 with the attorney general and the comptroller, shall by rule
22 develop the seminar. The office may enter into an agreement for
23 provision of a seminar developed under those rules with a person the
24 office determines is qualified to provide the seminar.

25 (b) A person providing a training seminar may:

26 (1) charge a reasonable fee for attending the seminar;
27 and

1 (2) compensate an individual who provides instruction
2 at the seminar. (V.A.C.S. Art. 5190.6, Secs. 39(e) (part), (f),
3 (g).)

4 Sec. 502.103. PROOF OF COMPLIANCE. (a) A person providing
5 a training seminar under Section 502.101 shall issue a certificate
6 of completion, on a form approved by the comptroller, to each person
7 who completes the seminar.

8 (b) A corporation shall present proof of compliance with
9 Section 502.101 to the comptroller by presenting the certificate of
10 completion issued under Subsection (a) for each person required to
11 attend a training seminar. The comptroller may impose an
12 administrative penalty, in an amount not to exceed \$1,000 for each
13 violation, against a corporation that fails to present proof in
14 accordance with this subsection. (V.A.C.S. Art. 5190.6, Secs.
15 39(c), (h).)

16 [Sections 502.104-502.150 reserved for expansion]

17 SUBCHAPTER D. REPORTING REQUIREMENTS

18 Sec. 502.151. REPORT TO COMPTROLLER. (a) Not later than
19 February 1 of each year, the board of directors of a corporation
20 shall submit a report to the comptroller that includes:

21 (1) a statement of:

22 (A) the corporation's primary economic
23 development objectives;

24 (B) the corporation's total revenue during the
25 preceding fiscal year;

26 (C) the corporation's total expenditures during
27 the preceding fiscal year; and

1 (D) the corporation's total expenditures during
2 the preceding fiscal year in each of the following categories:

- 3 (i) administration;
4 (ii) personnel;
5 (iii) marketing or promotion;
6 (iv) direct business incentives;
7 (v) job training;
8 (vi) debt service;
9 (vii) capital costs;
10 (viii) affordable housing; and
11 (ix) payments to taxing units, including
12 school districts;

13 (2) a list of the corporation's capital assets,
14 including land and buildings; and

15 (3) any other information the comptroller requires to
16 determine the use of the sales and use tax imposed under Chapter 504
17 or 505 to encourage economic development in this state.

18 (b) The report:

19 (1) must be in the form required by the comptroller;
20 and

21 (2) may not exceed one page. (V.A.C.S. Art. 5190.6,
22 Secs. 4C(a), (b).)

23 Sec. 502.152. NOTICE OF FAILURE TO REPORT. (a) If a
24 corporation does not submit a report as required by Section 502.151
25 or does not include sufficient information in the report, the
26 comptroller shall provide to the corporation written notice of the
27 failure, including information on how to correct the failure.

1 (b) The comptroller may impose an administrative penalty of
2 \$200 against a corporation that does not correct the failure before
3 the 31st day after the date the corporation receives notice under
4 Subsection (a). The comptroller by rule shall prescribe the
5 procedures for imposition of the administrative penalty. The rules
6 must protect the corporation's due process rights. (V.A.C.S. Art.
7 5190.6, Secs. 4C(c), (d), (e).)

8 Sec. 502.153. REPORT TO LEGISLATURE. Not later than
9 November 1 of each even-numbered year, the comptroller shall submit
10 to the legislature a report on the use of the sales and use tax
11 imposed under Chapters 504 and 505 to encourage economic
12 development in this state. On request, the comptroller shall
13 provide without charge a copy of the report to a corporation.
14 (V.A.C.S. Art. 5190.6, Secs. 4C(f), (g).)

15 CHAPTER 503. TEXAS SMALL BUSINESS INDUSTRIAL
16 DEVELOPMENT CORPORATION

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 503.001. STATUS AS CORPORATION
19 Sec. 503.002. ACTION ON BEHALF OF STATE
20 Sec. 503.003. INCONSISTENCY WITH OTHER PROVISION OF
21 SUBTITLE

22 [Sections 503.004-503.050 reserved for expansion]

23 SUBCHAPTER B. OPERATION OF CORPORATION

24 Sec. 503.051. BOARD OF DIRECTORS
25 Sec. 503.052. LIMITATION ON LIABILITY
26 Sec. 503.053. EXPENDITURES; APPROVAL OF PROGRAMS

1 Sec. 503.054. USE OF MONEY BY TEXAS ECONOMIC DEVELOPMENT

2 BANK

3 Sec. 503.055. DEPOSITORY

4 [Sections 503.056-503.100 reserved for expansion]

5 SUBCHAPTER C. SPECIFIC POWERS AND LIMITATIONS ON POWERS

6 Sec. 503.101. FINANCING FOR USERS

7 Sec. 503.102. ADDITIONAL PROJECTS AUTHORIZED

8 Sec. 503.103. BONDS

9 CHAPTER 503. TEXAS SMALL BUSINESS INDUSTRIAL

10 DEVELOPMENT CORPORATION

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 503.001. STATUS AS CORPORATION. (a) The Texas Small
13 Business Industrial Development Corporation is a corporation under
14 this subtitle and shall be organized and governed in accordance
15 with this subtitle.

16 (b) The corporation has the powers of and is subject to the
17 limitations applicable to a corporation under this subtitle, except
18 as otherwise provided by this chapter. (V.A.C.S. Art. 5190.6, Sec.
19 4(b) (part).)

20 Sec. 503.002. ACTION ON BEHALF OF STATE. (a) For purposes
21 of this subtitle, this state is considered to be the unit that
22 authorized creation of the Texas Small Business Industrial
23 Development Corporation.

24 (b) The corporation shall act on behalf of this state to
25 implement the public purposes of this subtitle. (V.A.C.S. Art.
26 5190.6, Sec. 4(b) (part).)

27 Sec. 503.003. INCONSISTENCY WITH OTHER PROVISION OF

1 SUBTITLE. To the extent this chapter is inconsistent with another
2 provision of this subtitle relating to the existence, powers,
3 limitations, organization, operation, or affairs of the Texas Small
4 Business Industrial Development Corporation, this chapter
5 controls. (V.A.C.S. Art. 5190.6, Sec. 4(b) (part).)

6 [Sections 503.004-503.050 reserved for expansion]

7 SUBCHAPTER B. OPERATION OF CORPORATION

8 Sec. 503.051. BOARD OF DIRECTORS. (a) The governor shall
9 appoint the board of directors of the Texas Small Business
10 Industrial Development Corporation.

11 (b) The governor or the governor's designee and the
12 executive director of the economic development office serve as
13 nonvoting ex officio members of the board. (V.A.C.S. Art. 5190.6,
14 Sec. 4(d).)

15 Sec. 503.052. LIMITATION ON LIABILITY. A director,
16 officer, employee, or member of the economic development office
17 acting on behalf of the Texas Small Business Industrial Development
18 Corporation is not personally liable:

19 (1) for damage, loss, or injury resulting from the
20 performance of the person's duties under this subtitle; or

21 (2) on any commitment or agreement executed on behalf
22 of the corporation under this subtitle. (V.A.C.S. Art. 5190.6,
23 Sec. 4(e).)

24 Sec. 503.053. EXPENDITURES; APPROVAL OF PROGRAMS. (a)
25 Expenses that the Texas Small Business Industrial Development
26 Corporation incurs in operating and administering the
27 corporation's programs and affairs, including expenses for

1 employees and program assistance or development, shall be paid out
2 of fees collected or revenue generated under this subtitle.

3 (b) Each program or expenditure of the corporation must be
4 approved on behalf of this state by the Texas Economic Development
5 Bank. (V.A.C.S. Art. 5190.6, Sec. 4(f).)

6 Sec. 503.054. USE OF MONEY BY TEXAS ECONOMIC DEVELOPMENT
7 BANK. Money of the Texas Small Business Industrial Development
8 Corporation may not be used or made available for use by the Texas
9 Economic Development Bank except to reimburse the bank for expenses
10 the bank incurs in its official capacity on behalf of the
11 corporation. (V.A.C.S. Art. 5190.6, Sec. 4(g) (part).)

12 Sec. 503.055. DEPOSITORY. Revenue and other money of the
13 Texas Small Business Industrial Development Corporation shall be
14 deposited with one or more financial institutions that the
15 corporation's board of directors chooses for that purpose.
16 (V.A.C.S. Art. 5190.6, Sec. 4(g) (part).)

17 [Sections 503.056-503.100 reserved for expansion]

18 SUBCHAPTER C. SPECIFIC POWERS AND LIMITATIONS ON POWERS

19 Sec. 503.101. FINANCING FOR USERS. In addition to
20 exercising any other power of a corporation under this subtitle,
21 the Texas Small Business Industrial Development Corporation may:

22 (1) make a loan through the purchase of or
23 participation in, and pledge, negotiate, or sell, bonds, notes, and
24 other evidences of indebtedness of a user to finance a project that
25 represents a direct loan, a grant, or a loan participation, or the
26 repayment of which is wholly or partly insured or otherwise
27 guaranteed, by the United States, this state, or an agency,

1 department, or instrumentality of the United States or this state;
2 and

3 (2) otherwise directly or indirectly provide
4 financing for a user in the manner that the corporation determines
5 to be necessary or convenient for the performance of the
6 corporation's public purposes, functions, and duties under this
7 subtitle. (V.A.C.S. Art. 5190.6, Sec. 4(h).)

8 Sec. 503.102. ADDITIONAL PROJECTS AUTHORIZED. (a)
9 Notwithstanding any other provision of this subtitle, "project"
10 includes use of amounts financed through the Texas Small Business
11 Industrial Development Corporation's purchase of bonds, notes, or
12 other evidences of indebtedness of a user under this chapter if the
13 corporation's board of directors finds the use to be required or
14 suitable for promoting economic development in this state.

15 (b) A finding under Subsection (a) may be based solely on
16 review by the corporation's board of directors of the criteria used
17 to determine eligibility of a user to obtain a direct loan, a grant,
18 a loan participation, insurance, or another guarantee from the
19 United States, this state, or an agency or instrumentality of the
20 United States or this state. (V.A.C.S. Art. 5190.6, Sec. 4(i)
21 (part).)

22 Sec. 503.103. BONDS. (a) The Texas Small Business
23 Industrial Development Corporation may not issue bonds.

24 (b) All bonds issued and delivered by the Texas Small
25 Business Industrial Development Corporation before September 1,
26 1987, and all proceedings authorizing those bonds are
27 incontestable.

1 (c) Proceeds of bonds issued before September 1, 1987, may
2 be used:

3 (1) to pay all or part of the cost of a project
4 regardless of whether the cost or project was, before that date,
5 within the definitions of those terms under the Texas Department of
6 Commerce Act, Chapter 374, Acts of the 70th Legislature, Regular
7 Session, 1987; or

8 (2) for any other purpose authorized by this subtitle.
9 (V.A.C.S. Art. 5190.6, Secs. 4(c) (part), (i) (part), (j).)

10 CHAPTER 504. TYPE A CORPORATIONS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 504.001. DEFINITION

13 Sec. 504.002. APPLICABILITY OF CHAPTER

14 Sec. 504.003. AUTHORITY TO CREATE CORPORATION

15 Sec. 504.004. CONTENTS OF CERTIFICATE OF FORMATION

16 Sec. 504.005. CORPORATION NOT SUBJECT TO CERTAIN

17 PROVISIONS

18 [Sections 504.006-504.050 reserved for expansion]

19 SUBCHAPTER B. GOVERNANCE OF CORPORATION

20 Sec. 504.051. BOARD OF DIRECTORS

21 Sec. 504.052. OFFICERS

22 Sec. 504.053. QUORUM

23 Sec. 504.054. LOCATION OF BOARD MEETINGS

24 Sec. 504.055. RESTRICTIONS ON REGISTERED AGENT AND

25 OFFICE

26 [Sections 504.056-504.100 reserved for expansion]

1 SUBCHAPTER C. GENERAL POWERS AND DUTIES

2 Sec. 504.101. APPLICABILITY OF OTHER LAW; CONFLICTS

3 Sec. 504.102. CONTRACT WITH OTHER PRIVATE CORPORATION

4 Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF
5 PROJECT; EXCEPTIONS

6 Sec. 504.104. ASSUMPTION OR PAYMENT OF PREEXISTING
7 DEBT PROHIBITED

8 Sec. 504.105. LIMITATION ON USE OF REVENUES FOR
9 PROMOTIONAL PURPOSE

10 Sec. 504.106. EMINENT DOMAIN

11 Sec. 504.107. LIABILITY

12 [Sections 504.108-504.150 reserved for expansion]

13 SUBCHAPTER D. AUTHORIZATION FOR ADDITIONAL PROJECTS

14 Sec. 504.151. DEFINITIONS

15 Sec. 504.152. ELECTION TO AUTHORIZE PROJECTS
16 APPLICABLE TO TYPE B CORPORATIONS

17 Sec. 504.153. PUBLIC HEARING PRECEDING ELECTION

18 Sec. 504.154. LIMITATION ON SUBSEQUENT ELECTION

19 Sec. 504.155. SUBSEQUENT APPROVAL OF ADDITIONAL
20 PROJECTS

21 Sec. 504.156. APPLICABILITY OF CHAPTER TO ADDITIONAL
22 PROJECT

23 [Sections 504.157-504.200 reserved for expansion]

24 SUBCHAPTER E. INVESTMENT AGREEMENTS

25 Sec. 504.201. DEFINITIONS

26 Sec. 504.202. AGREEMENT TO INVEST IN EXTRATERRITORIAL
27 PROJECT

- 1 Sec. 504.203. REQUIRED AGREEMENT WITH CORRESPONDING
- 2 TAXING UNIT
- 3 Sec. 504.204. EFFECT ON AUTHORITY UNDER OTHER LAW
- 4 [Sections 504.205-504.250 reserved for expansion]
- 5 SUBCHAPTER F. SALES AND USE TAX
- 6 Sec. 504.251. TAX AUTHORIZED
- 7 Sec. 504.252. SALES TAX
- 8 Sec. 504.253. USE TAX
- 9 Sec. 504.254. COMBINED TAX RATE
- 10 Sec. 504.255. APPLICABILITY OF TAX CODE
- 11 Sec. 504.256. BALLOT
- 12 Sec. 504.257. LIMITATION ON DURATION OF TAX
- 13 Sec. 504.258. ELECTION TO REDUCE OR INCREASE TAX RATE
- 14 Sec. 504.259. REDUCTION OF TAX WITHIN REGIONAL
- 15 TRANSPORTATION AUTHORITY
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- 17 PROJECT
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- 19 TAX CODE
- 20 Sec. 504.262. PROCEDURES ON EXPIRATION OF TAX
- 21 [Sections 504.263-504.300 reserved for expansion]
- 22 SUBCHAPTER G. USE OF TAX PROCEEDS
- 23 Sec. 504.301. DELIVERY AND GENERAL USE OF TAX PROCEEDS
- 24 Sec. 504.302. PAYMENT OF MAINTENANCE AND OPERATING
- 25 COSTS; ELECTION
- 26 Sec. 504.303. PAYMENT OF BONDS

1 Sec. 504.304. PAYMENT FOR CLEANUP OF CONTAMINATED
2 PROPERTY; ELECTION

3 Sec. 504.305. PAYMENT FOR JOB TRAINING

4 [Sections 504.306-504.350 reserved for expansion]

5 SUBCHAPTER H. TERMINATION OF CORPORATION

6 Sec. 504.351. ELECTION TO TERMINATE EXISTENCE OF CORPORATION ON
7 PETITION

8 Sec. 504.352. BALLOT

9 Sec. 504.353. TERMINATION OF EXISTENCE OF CORPORATION

10 CHAPTER 504. TYPE A CORPORATIONS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 504.001. DEFINITION. In this chapter, "authorizing
13 municipality" means the municipality that authorizes the creation
14 of a Type A corporation. (New.)

15 Sec. 504.002. APPLICABILITY OF CHAPTER. This chapter
16 applies only to a municipality that:

17 (1) is located in a county that has a population of
18 500,000 or less; or

19 (2) has a population of less than 50,000 and:

20 (A) is located in two or more counties, one of
21 which has a population of 500,000 or more;

22 (B) is located within the territorial limits of,
23 but has not elected to become a part of, a metropolitan rapid
24 transit authority:

25 (i) the principal municipality of which has
26 a population of less than 1.9 million; and

27 (ii) that was created before January 1,

1 1980, under Chapter 141, Acts of the 63rd Legislature, Regular
2 Session, 1973, and is operating under Chapter 451, Transportation
3 Code; or

4 (C) is located within the territorial limits of,
5 but has not elected to become a part of, a regional transportation
6 authority:

7 (i) the principal municipality of which has
8 a population of more than 750,000; and

9 (ii) that was created under Chapter 683,
10 Acts of the 66th Legislature, Regular Session, 1979, or Chapter
11 452, Transportation Code, and is operating under Chapter 452,
12 Transportation Code. (V.A.C.S. Art. 5190.6, Sec. 4A(a).)

13 Sec. 504.003. AUTHORITY TO CREATE CORPORATION. (a) A
14 municipality may authorize the creation under this subtitle of a
15 Type A corporation.

16 (b) A municipality may not authorize the creation of more
17 than one Type A corporation. (V.A.C.S. Art. 5190.6, Sec. 4A(b)(1)
18 (part).)

19 Sec. 504.004. CONTENTS OF CERTIFICATE OF FORMATION. The
20 certificate of formation of a Type A corporation must state that the
21 corporation is governed by this chapter. (V.A.C.S. Art. 5190.6,
22 Sec. 4A(b)(1) (part).)

23 Sec. 504.005. CORPORATION NOT SUBJECT TO CERTAIN
24 PROVISIONS. Sections 501.203, 501.205, 501.251-501.254,
25 501.255(a) and (b), 501.256, and 501.257 do not apply to a
26 corporation under this chapter. (V.A.C.S. Art. 5190.6, Sec.
27 4A(h).)

1 [Sections 504.006-504.050 reserved for expansion]

2 SUBCHAPTER B. GOVERNANCE OF CORPORATION

3 Sec. 504.051. BOARD OF DIRECTORS. (a) The board of
4 directors of a Type A corporation consists of at least five
5 directors.

6 (b) A director is appointed by the governing body of the
7 authorizing municipality, serves at the pleasure of that governing
8 body, and may be removed by that governing body at any time without
9 cause.

10 (c) The governing body of the authorizing municipality
11 shall determine the number of directors and the length of each
12 director's term, except that the length of a director's term may not
13 exceed six years. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

14 Sec. 504.052. OFFICERS. The board of directors of a Type A
15 corporation shall appoint:

16 (1) a president;

17 (2) a secretary; and

18 (3) other officers of the corporation that the
19 governing body of the authorizing municipality considers
20 necessary. (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

21 Sec. 504.053. QUORUM. A majority of the entire membership
22 of the board of directors of a Type A corporation is a quorum.
23 (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

24 Sec. 504.054. LOCATION OF BOARD MEETINGS. The board of
25 directors of a Type A corporation shall conduct each board meeting
26 within the boundaries of the authorizing municipality. (V.A.C.S.
27 Art. 5190.6, Sec. 4A(c) (part).)

1 Sec. 504.055. RESTRICTIONS ON REGISTERED AGENT AND OFFICE.

2 (a) The registered agent of a Type A corporation must be an
3 individual who is a resident of this state.

4 (b) The registered office of a Type A corporation must be
5 located within the boundaries of the authorizing municipality.
6 (V.A.C.S. Art. 5190.6, Sec. 4A(c) (part).)

7 [Sections 504.056-504.100 reserved for expansion]

8 SUBCHAPTER C. GENERAL POWERS AND DUTIES

9 Sec. 504.101. APPLICABILITY OF OTHER LAW; CONFLICTS. A
10 Type A corporation has the powers and is subject to the limitations
11 of a corporation created under another provision of this subtitle
12 outside of this chapter. To the extent of a conflict between this
13 chapter and another provision of this subtitle, this chapter
14 prevails. (V.A.C.S. Art. 5190.6, Sec. 4A(b)(1) (part).)

15 Sec. 504.102. CONTRACT WITH OTHER PRIVATE CORPORATION. A
16 Type A corporation may contract with another private corporation
17 to:

18 (1) carry out an industrial development program or
19 objective; or

20 (2) assist with the development or operation of an
21 economic development program or objective consistent with the
22 purposes and duties provided by this subtitle. (V.A.C.S. Art.
23 5190.6, Sec. 4A(b)(1) (part).)

24 Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF PROJECT;
25 EXCEPTIONS. (a) Except as otherwise provided by this section, a
26 Type A corporation may not undertake a project the primary purpose
27 of which is to provide:

- 1 (1) a transportation facility;
2 (2) a solid waste disposal facility;
3 (3) a sewage facility;
4 (4) a facility for furnishing water to the general
5 public; or
6 (5) an air or water pollution control facility.

7 (b) A Type A corporation may provide a facility described by
8 Subsection (a) to benefit property acquired for a project that has
9 another primary purpose.

10 (c) A Type A corporation may undertake a project the primary
11 purpose of which is to provide:

12 (1) a general aviation business service airport that
13 is an integral part of an industrial park;

14 (2) a port-related facility to support waterborne
15 commerce; or

16 (3) an airport-related facility, if the authorizing
17 municipality:

18 (A) is wholly or partly located within 25 miles
19 of an international border; and

20 (B) has, at the time the project is approved by
21 the corporation as provided by this subtitle:

22 (i) a population of less than 50,000; or

23 (ii) an average rate of unemployment that
24 is greater than the state average rate of unemployment during the
25 most recent 12-month period for which data is available that
26 precedes the date the project is approved. (V.A.C.S. Art. 5190.6,
27 Sec. 4A(i).)

1 Sec. 504.104. ASSUMPTION OR PAYMENT OF PREEXISTING DEBT
2 PROHIBITED. A Type A corporation may not:

3 (1) assume a debt that existed before the date the
4 authorizing municipality authorized the creation of the
5 corporation; or

6 (2) make an expenditure to pay the principal of or
7 interest on a debt that existed before the date prescribed by
8 Subdivision (1). (V.A.C.S. Art. 5190.6, Sec. 4A(q).)

9 Sec. 504.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL
10 PURPOSE. (a) Except as provided by Subsection (b), a Type A
11 corporation may spend not more than 10 percent of the corporate
12 revenues for promotional purposes.

13 (b) A Type A corporation may spend not more than 25 percent
14 of the corporate revenues for promotional purposes if the
15 authorizing municipality:

16 (1) is located in two counties;

17 (2) has a population of less than 24,250 according to
18 the 1990 federal census; and

19 (3) is located wholly or partly within 10 miles of a
20 federal military reservation. (V.A.C.S. Art. 5190.6, Secs.
21 4A(b)(1) (part), (2).)

22 Sec. 504.106. EMINENT DOMAIN. A Type A corporation may not
23 exercise the power of eminent domain except by action of the
24 governing body of the authorizing municipality. (V.A.C.S. Art.
25 5190.6, Sec. 4A(g).)

26 Sec. 504.107. LIABILITY. (a) The following are not liable
27 for damages arising from the performance of a governmental function

1 of a Type A corporation or the authorizing municipality:

- 2 (1) the corporation;
- 3 (2) a director of the corporation;
- 4 (3) the municipality;
- 5 (4) a member of the governing body of the
- 6 municipality; and
- 7 (5) an employee of the corporation or municipality.

8 (b) For purposes of Chapter 101, Civil Practice and Remedies
9 Code (Texas Tort Claims Act), a Type A corporation is a governmental
10 unit and the corporation's actions are governmental functions.
11 (V.A.C.S. Art. 5190.6, Sec. 4A(j).)

12 [Sections 504.108-504.150 reserved for expansion]

13 SUBCHAPTER D. AUTHORIZATION FOR ADDITIONAL PROJECTS

14 Sec. 504.151. DEFINITIONS. In this subchapter:

15 (1) "Related infrastructure" has the meaning assigned
16 by Section 334.001.

17 (2) "Sports venue" means an arena, coliseum, stadium,
18 or other type of area or facility:

19 (A) that is primarily used or is planned for
20 primary use for one or more professional or amateur sports or
21 athletics events; and

22 (B) for which a fee is charged or is planned to be
23 charged for admission to the sports or athletics events, other than
24 occasional civic, charitable, or promotional events. (V.A.C.S.
25 Art. 5190.6, Sec. 4A(s)(5), as added Acts 75th Leg., R.S., Ch. 551.)

26 Sec. 504.152. ELECTION TO AUTHORIZE PROJECTS APPLICABLE TO
27 TYPE B CORPORATIONS. (a) An authorizing municipality may submit to

1 the voters of the municipality a ballot proposition that authorizes
2 the Type A corporation to use the sales and use tax imposed under
3 this chapter, including any amount previously authorized and
4 collected, for a specific project or for a specific category of
5 projects that do not qualify under this chapter but qualify under
6 Chapter 505, including a sports venue and related infrastructure.

7 (b) The project or category of projects described by
8 Subsection (a) must be clearly described on the ballot so that a
9 voter is able to discern the limits of the specific project or
10 category of projects authorized by the proposition. If maintenance
11 and operating costs of an otherwise authorized facility are to be
12 paid from the sales and use tax, the ballot language must clearly
13 state that fact.

14 (c) The authorizing municipality may submit the ballot
15 proposition at:

16 (1) an election held under another provision of this
17 subtitle, including the election at which the proposition to
18 initially approve the adoption of a sales and use tax for the
19 benefit of the corporation is submitted; or

20 (2) a separate election to be held on a uniform
21 election date. (V.A.C.S. Art. 5190.6, Secs. 4A(s)(1) (part), (2).)

22 Sec. 504.153. PUBLIC HEARING PRECEDING ELECTION. Before an
23 election may be held under Section 504.152, a public hearing must be
24 held in the authorizing municipality to inform the municipality's
25 residents of the cost and impact of the project or category of
26 projects. At least 30 days before the date set for the hearing,
27 notice of the date, time, place, and subject of the hearing must be

1 published in a newspaper with general circulation in the
2 municipality in which the project is located. The notice should be
3 published on a weekly basis until the date of the hearing.
4 (V.A.C.S. Art. 5190.6, Sec. 4A(s)(3), as added Acts 75th Leg.,
5 R.S., Chs. 551, 958.)

6 Sec. 504.154. LIMITATION ON SUBSEQUENT ELECTION. If a
7 majority of the voters voting on the issue do not approve a specific
8 project or a specific category of projects at an election under
9 Section 504.152, another election concerning the same project or
10 category of projects may not be held before the first anniversary of
11 the date of the most recent election disapproving the project or
12 category of projects. (V.A.C.S. Art. 5190.6, Sec. 4A(s)(4).)

13 Sec. 504.155. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS.
14 Prior approval of a specific project at an election or completion of
15 a specific project approved at an election does not prevent an
16 authorizing municipality from seeking voter approval of an
17 additional project or category of projects under this subchapter to
18 be funded from the same sales and use tax. (V.A.C.S. Art. 5190.6,
19 Sec. 4A(s)(1) (part).)

20 Sec. 504.156. APPLICABILITY OF CHAPTER TO ADDITIONAL
21 PROJECT. A project undertaken under this subchapter is governed by
22 this chapter, including the provisions of this chapter relating to
23 the authorization and expiration of a sales and use tax. (V.A.C.S.
24 Art. 5190.6, Sec. 4A(s)(5), as added Acts 75th Leg., R.S., Ch. 958.)

25 [Sections 504.157-504.200 reserved for expansion]

26 SUBCHAPTER E. INVESTMENT AGREEMENTS

27 Sec. 504.201. DEFINITIONS. In this subchapter:

1 (1) "Base taxable value" means the taxable value of
2 property located in the defined area of a project as of January 1 of
3 the year in which the agreement is entered into under Section
4 504.202.

5 (2) "Corresponding taxing unit" means another taxing
6 unit that:

7 (A) is of the same type of political subdivision
8 as a taxing unit that enters into an agreement under Section
9 504.202; and

10 (B) taxes property located in the defined area of
11 a project that is the subject of the agreement.

12 (3) "Taxing unit" has the meaning assigned by Section
13 1.04, Tax Code. (V.A.C.S. Art. 5190.6, Secs. 4A(u)(1), (5) (part),
14 (6) (part).)

15 Sec. 504.202. AGREEMENT TO INVEST IN EXTRATERRITORIAL
16 PROJECT. (a) A taxing unit may enter into an agreement with a Type
17 A corporation to invest in a project that is undertaken by the
18 corporation and that is not located in the territory of the taxing
19 unit. A Type A corporation may enter into an agreement under this
20 section with more than one taxing unit.

21 (b) Before entering into the agreement, the Type A
22 corporation undertaking the project must designate a defined area
23 that includes the territory where the project is to be located.

24 (c) The agreement must state the base taxable value of the
25 property in the defined area of the project.

26 (d) The agreement may provide that the taxing unit is
27 entitled to receive from the Type A corporation, in exchange for the

1 investment, an amount equal to a specified percentage of the tax
2 revenue from taxes imposed by the corresponding taxing unit on the
3 taxable value of the property in the defined area that exceeds the
4 base taxable value, during the period the corresponding taxing unit
5 imposes taxes on that property. (V.A.C.S. Art. 5190.6, Secs.
6 4A(u)(2), (3), (4), (5) (part).)

7 Sec. 504.203. REQUIRED AGREEMENT WITH CORRESPONDING TAXING
8 UNIT. A Type A corporation that enters into an agreement under
9 Section 504.202 shall enter into an agreement with a corresponding
10 taxing unit to recover the amount paid by the corporation to a
11 taxing unit as provided by Section 504.202(d). (V.A.C.S. Art.
12 5190.6, Sec. 4A(u)(6) (part).)

13 Sec. 504.204. EFFECT ON AUTHORITY UNDER OTHER LAW. (a)
14 This subchapter does not affect a taxing unit's authority to grant a
15 tax abatement.

16 (b) This subchapter does not affect a Type A corporation's
17 authority to invest in a project or recover its total investment by
18 contract under Section 501.159. (V.A.C.S. Art. 5190.6, Secs.
19 4A(u)(7), (8).)

20 [Sections 504.205-504.250 reserved for expansion]

21 SUBCHAPTER F. SALES AND USE TAX

22 Sec. 504.251. TAX AUTHORIZED. The authorizing municipality
23 may adopt a sales and use tax for the benefit of a Type A corporation
24 if the tax is approved by a majority of the voters of the
25 municipality voting at an election held for that purpose.
26 (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

27 Sec. 504.252. SALES TAX. (a) If the authorizing

1 municipality adopts the tax under Section 504.251, a tax is imposed
2 on the receipts from the sale at retail of taxable items within the
3 municipality at the rate approved by the voters.

4 (b) The rate of the tax imposed under Subsection (a) must be
5 equal to one-eighth, one-fourth, three-eighths, or one-half of one
6 percent. (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

7 Sec. 504.253. USE TAX. (a) If the authorizing municipality
8 adopts the tax under Section 504.251, an excise tax is imposed on
9 the use, storage, or other consumption within the municipality of
10 taxable items purchased, leased, or rented from a retailer during
11 the period that the tax is effective within the municipality.

12 (b) The rate of the excise tax is the same as the rate of the
13 sales tax portion of the sales and use tax and is applied to the
14 sales price of the taxable items. (V.A.C.S. Art. 5190.6, Sec. 4A(d)
15 (part).)

16 Sec. 504.254. COMBINED TAX RATE. (a) An authorizing
17 municipality may not adopt a rate under this chapter that, when
18 added to the rates of all other sales and use taxes imposed by the
19 authorizing municipality and other political subdivisions of this
20 state having territory in the authorizing municipality, would
21 result in a combined rate exceeding two percent.

22 (b) An election adopting a rate that would result in a rate
23 exceeding the combined rate limit under Subsection (a) has no
24 effect. (V.A.C.S. Art. 5190.6, Sec. 4A(d) (part).)

25 Sec. 504.255. APPLICABILITY OF TAX CODE. (a) Chapter 321,
26 Tax Code, governs an election to approve the adoption of the sales
27 and use tax under this chapter and governs the imposition,

1 computation, administration, governance, use, and abolition of the
2 tax except as inconsistent with this chapter.

3 (b) The tax imposed under this chapter takes effect as
4 provided by Section 321.102(a), Tax Code. (V.A.C.S. Art. 5190.6,
5 Sec. 4A(e).)

6 Sec. 504.256. BALLOT. In an election to adopt the sales and
7 use tax under this chapter, the ballot shall be printed to provide
8 for voting for or against the proposition: "The adoption of a sales
9 and use tax for the promotion and development of new and expanded
10 business enterprises at the rate of _____ of one percent"
11 (one-eighth, one-fourth, three-eighths, or one-half to be inserted
12 as appropriate). (V.A.C.S. Art. 5190.6, Sec. 4A(m).)

13 Sec. 504.257. LIMITATION ON DURATION OF TAX. (a) At an
14 election held under Section 504.251 or 504.258, the authorizing
15 municipality may also allow the voters to vote on a ballot
16 proposition to limit the period for imposition of a sales and use
17 tax. If an authorizing municipality elects to limit the period for
18 imposition of the tax, the following phrase shall be added to the
19 end of the ballot proposition prescribed by Section 504.256: "to be
20 imposed for _____ years" (the number of years to be inserted as
21 appropriate). The governing body of the municipality shall set the
22 expiration date of the proposed tax to occur on the appropriate
23 anniversary of the effective date of the tax.

24 (b) A sales and use tax imposed for a limited period under
25 this section expires on the date set by the governing body of the
26 authorizing municipality under Subsection (a) unless the tax is
27 repealed on an earlier date by a majority of the voters voting in an

1 election held in the municipality. If an election to abolish the
2 tax is held, Sections 321.102(a) and 321.402(b), Tax Code, apply to
3 the date of repeal.

4 (c) If an authorizing municipality reduces the rate of an
5 additional sales and use tax under Chapter 321, Tax Code, to impose
6 a tax under this chapter for a limited period as provided by this
7 section, and the municipality does not have an election to change
8 the rate of the additional sales and use tax before the tax under
9 this chapter expires, on the date the tax under this chapter
10 expires, the rate of the municipality's additional sales and use
11 tax returns to the rate in effect immediately before the tax under
12 this chapter was adopted. The municipality is not required to hold
13 an election under Chapter 321, Tax Code, to impose the additional
14 sales and use tax at that rate.

15 (d) A sales and use tax that is approved without limiting
16 the period during which the tax is imposed remains in effect until
17 repealed by election.

18 (e) An authorizing municipality that has imposed a tax under
19 this chapter may extend the period of the tax's imposition or
20 reimpose the tax only if the extension or reimposition is approved
21 by a majority of the voters of the municipality voting at an
22 election held for that purpose. (V.A.C.S. Art. 5190.6, Sec. 4A(n)
23 (part).)

24 Sec. 504.258. ELECTION TO REDUCE OR INCREASE TAX RATE. (a)
25 An authorizing municipality that has imposed a sales and use tax
26 under this chapter may, in the same manner and by the same procedure
27 as the municipality imposed the tax, reduce or increase the tax rate

1 by a majority of the voters of the municipality voting at an
2 election held for that purpose.

3 (b) On petition of 10 percent or more of the registered
4 voters of the authorizing municipality requesting an election to
5 reduce or increase the tax rate under this chapter, the governing
6 body of the municipality shall order an election on the issue.

7 (c) The tax rate may be:

8 (1) reduced in one or more increments of one-eighth of
9 one percent, to a minimum rate of one-eighth of one percent; or

10 (2) increased in one or more increments of one-eighth
11 of one percent, to a maximum rate of one-half of one percent.

12 (d) The ballot for an election under this section shall be
13 printed in the same manner as the ballot under Section 504.256.
14 (V.A.C.S. Art. 5190.6, Sec. 4A(o).)

15 Sec. 504.259. REDUCTION OF TAX WITHIN REGIONAL
16 TRANSPORTATION AUTHORITY. Notwithstanding any other provision of
17 this chapter, a tax under this chapter imposed by an authorizing
18 municipality that is located within the territorial limits of a
19 regional transportation authority and that has been added to the
20 territory of the authority under Section 452.6025, Transportation
21 Code, is subject to reduction in the manner prescribed by Section
22 452.6025, Transportation Code. (V.A.C.S. Art. 5190.6, Sec.
23 4A(o-1).)

24 Sec. 504.260. LIMITED SALES AND USE TAX FOR SPECIFIC
25 PROJECT. (a) At an election held under Section 504.251 or 504.258,
26 the authorizing municipality may also allow the voters to vote on a
27 ballot proposition to limit the use of the sales and use tax to a

1 specific project. If an authorizing municipality elects to limit
2 the use of the tax to a specific project, in the ballot proposition
3 prescribed by Section 504.256 or 504.261 a description of the
4 project shall be substituted for the words "new and expanded
5 business enterprises."

6 (b) When the last of a Type A corporation's obligations have
7 been satisfied regarding the specific project for which the sales
8 and use tax was limited, the corporation shall send to the
9 comptroller a notice stating that the sales and use tax imposed for
10 the specific project may not be collected after the last day of the
11 first calendar quarter beginning after the date of notification. A
12 sales and use tax imposed for a specific project under this section
13 may not be collected after the last day of the first calendar
14 quarter beginning after the date of the notification to the
15 comptroller. The state shall forward revenue collected after the
16 obligations for the specific project have been satisfied to the
17 governing body of the authorizing municipality to be used to pay
18 current bonded indebtedness of the municipality.

19 (c) A Type A corporation created to perform a specific
20 project under this section may retain its corporate existence and
21 perform any other project approved by the voters of the authorizing
22 municipality at an election held under Section 504.251 or 504.258.
23 (V.A.C.S. Art. 5190.6, Sec. 4A(r).)

24 Sec. 504.261. CONCURRENT ELECTION WITH ELECTION UNDER TAX
25 CODE. (a) At an election to adopt, reduce, increase, or abolish
26 the sales and use tax under this chapter, the authorizing
27 municipality may also allow voters to vote on the same ballot on a

1 proposition to impose, reduce, increase, or abolish the additional
2 sales and use tax imposed under Section 321.101(b), Tax Code, if the
3 municipality is authorized by Chapter 321, Tax Code, to impose,
4 reduce, increase, or abolish the additional sales and use tax.
5 Except as provided by Subsection (b), the municipality must follow
6 the procedures of Chapter 321, Tax Code, in relation to the
7 imposition, reduction, increase, or abolishment of the additional
8 sales and use tax imposed under Section 321.101(b), Tax Code.

9 (b) In an election to impose, reduce, increase, or abolish
10 the tax under this chapter and the additional sales and use tax, the
11 ballot shall be printed to provide for voting for or against the
12 proposition: "The adoption of a sales and use tax within the
13 municipality for the promotion and development of new and expanded
14 business enterprises at the rate of _____ of one percent
15 (one-eighth, one-fourth, three-eighths, or one-half to be inserted
16 as appropriate) and the adoption of an additional sales and use tax
17 within the municipality at the rate of _____ of one percent to
18 be used to reduce the property tax rate" (one-eighth, one-fourth,
19 three-eighths, or one-half to be inserted as appropriate).
20 (V.A.C.S. Art. 5190.6, Sec. 4A(p).)

21 Sec. 504.262. PROCEDURES ON EXPIRATION OF TAX. (a) Before
22 the 60th day before the date that a sales and use tax imposed under
23 this chapter is to expire, the governing body of the authorizing
24 municipality imposing the tax shall send to the comptroller a
25 notice stating the expiration date of the tax.

26 (b) The state shall forward revenue collected from the
27 imposition of the tax after the tax's expiration date to the

1 governing body of the authorizing municipality to be used to pay
2 current bonded indebtedness of the municipality. (V.A.C.S. Art.
3 5190.6, Sec. 4A(n) (part).)

4 [Sections 504.263-504.300 reserved for expansion]

5 SUBCHAPTER G. USE OF TAX PROCEEDS

6 Sec. 504.301. DELIVERY AND GENERAL USE OF TAX PROCEEDS. On
7 the authorizing municipality's receipt from the comptroller of the
8 proceeds of the sales and use tax imposed under this chapter, the
9 authorizing municipality shall deliver the proceeds to the Type A
10 corporation for use in carrying out the corporation's functions.
11 (V.A.C.S. Art. 5190.6, Sec. 4A(f) (part).)

12 Sec. 504.302. PAYMENT OF MAINTENANCE AND OPERATING COSTS;
13 ELECTION. (a) The costs of a publicly owned and operated project
14 purchased or constructed under this chapter include the maintenance
15 and operating costs of the project.

16 (b) The proceeds of the sales and use tax imposed under this
17 chapter may be used to pay the maintenance and operating costs of a
18 project unless, not later than the 60th day after the date notice of
19 the specific use of the tax proceeds is first published, the
20 governing body of the authorizing municipality of the Type A
21 corporation undertaking the project receives a petition from more
22 than 10 percent of the registered voters of the municipality
23 requesting that an election be held before the tax proceeds may be
24 used to pay the maintenance and operating costs of the project.
25 (V.A.C.S. Art. 5190.6, Sec. 4A(c-1).)

26 Sec. 504.303. PAYMENT OF BONDS. The proceeds of the sales
27 and use tax imposed under this chapter may be used to pay the

1 principal of, interest on, and other costs relating to the Type A
2 corporation's bonds, but the bonds or any instrument related to the
3 bonds may not give a bondholder a right to demand payment from tax
4 proceeds in excess of the proceeds collected from the tax imposed
5 under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4A(f) (part).)

6 Sec. 504.304. PAYMENT FOR CLEANUP OF CONTAMINATED PROPERTY;
7 ELECTION. (a) The economic development office, with the
8 assistance of the Texas Commission on Environmental Quality, may
9 encourage a Type A corporation to use proceeds from the sales and
10 use tax imposed under this chapter for the cleanup of contaminated
11 property.

12 (b) A Type A corporation may use proceeds from the sales and
13 use tax for the cleanup of contaminated property only if the use of
14 tax proceeds for that purpose is authorized by a majority of the
15 voters of the authorizing municipality voting at an election held
16 for that purpose. The ballot in an election held under this
17 subsection shall be printed to provide for voting for or against the
18 proposition: "The use of sales and use tax proceeds for the cleanup
19 of contaminated property." (V.A.C.S. Art. 5190.6, Sec. 4A(t).)

20 Sec. 504.305. PAYMENT FOR JOB TRAINING. The proceeds of the
21 sales and use tax imposed under this chapter may also be used to pay
22 expenses relating to job training incurred by the Type A
23 corporation under Section 501.162. (V.A.C.S. Art. 5190.6, Sec.
24 4A(f) (part).)

25 [Sections 504.306-504.350 reserved for expansion]

26 SUBCHAPTER H. TERMINATION OF CORPORATION

27 Sec. 504.351. ELECTION TO TERMINATE EXISTENCE OF

1 CORPORATION ON PETITION. (a) On petition of 10 percent or more of
2 the registered voters of an authorizing municipality requesting an
3 election on the termination of the existence of the Type A
4 corporation, the governing body of the municipality shall order an
5 election on the issue.

6 (b) The authorizing municipality shall hold the election on
7 the next available uniform election date that occurs after the time
8 required by Section 3.005, Election Code. (V.A.C.S. Art. 5190.6,
9 Sec. 4A(k) (part).)

10 Sec. 504.352. BALLOT. The ballot for an election held
11 under Section 504.351 shall be printed to provide for voting for or
12 against the proposition: "Termination of the _____ (name of
13 the corporation)." (V.A.C.S. Art. 5190.6, Sec. 4A(k) (part).)

14 Sec. 504.353. TERMINATION OF EXISTENCE OF CORPORATION. (a)
15 If a majority of voters voting on the issue at an election held
16 under Section 504.351 approve the termination, the Type A
17 corporation shall:

18 (1) continue operations only as necessary to pay the
19 principal of and interest on the corporation's bonds and to meet
20 obligations incurred before the date of the election; and

21 (2) dispose of the corporation's assets and apply the
22 proceeds to satisfy obligations described by Subdivision (1), to
23 the extent practicable.

24 (b) When the last of the Type A corporation's obligations
25 are satisfied, any remaining assets of the corporation shall be
26 transferred to the authorizing municipality, and the existence of
27 the corporation is terminated.

1 (c) A tax imposed under this chapter may not be collected
2 after the last day of the first calendar quarter that begins after
3 the Type A corporation notifies the comptroller that the last of the
4 corporation's obligations has been satisfied. (V.A.C.S. Art.
5 5190.6, Sec. 4A(k) (part).)

6 CHAPTER 505. TYPE B CORPORATIONS

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 505.001. DEFINITION

9 Sec. 505.002. APPLICABILITY OF CHAPTER

10 Sec. 505.003. AUTHORITY TO CREATE CORPORATION

11 Sec. 505.004. CONTENTS OF CERTIFICATE OF FORMATION

12 Sec. 505.005. CORPORATION NOT SUBJECT TO CERTAIN

13 PROVISIONS

14 [Sections 505.006-505.050 reserved for expansion]

15 SUBCHAPTER B. GOVERNANCE OF CORPORATION

16 Sec. 505.051. BOARD OF DIRECTORS

17 Sec. 505.052. RESTRICTION ON BOARD MEMBERSHIP

18 Sec. 505.053. OFFICERS

19 Sec. 505.054. QUORUM

20 Sec. 505.055. LOCATION OF BOARD MEETINGS

21 Sec. 505.056. RESTRICTIONS ON REGISTERED AGENT AND

22 OFFICE

23 [Sections 505.057-505.100 reserved for expansion]

24 SUBCHAPTER C. POWERS AND DUTIES

25 Sec. 505.101. APPLICABILITY OF OTHER LAW; CONFLICTS

26 Sec. 505.102. CONTRACT WITH OTHER PRIVATE CORPORATION

- 1 Sec. 505.103. LIMITATION ON USE OF REVENUES FOR
2 PROMOTIONAL PURPOSES
3 Sec. 505.104. BOND REPAYMENT
4 Sec. 505.105. EMINENT DOMAIN
5 Sec. 505.106. LIABILITY
6 [Sections 505.107-505.150 reserved for expansion]
7 SUBCHAPTER D. AUTHORIZED PROJECTS
8 Sec. 505.151. AUTHORIZED PROJECTS
9 Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR
10 COMMUNITY FACILITIES
11 Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING
12 Sec. 505.154. PROJECTS RELATED TO WATER SUPPLY
13 FACILITIES AND WATER CONSERVATION
14 PROGRAMS
15 Sec. 505.155. PROJECTS RELATED TO BUSINESS ENTERPRISES
16 THAT CREATE OR RETAIN PRIMARY JOBS
17 Sec. 505.156. PROJECTS RELATED TO BUSINESS ENTERPRISES
18 IN CERTAIN MUNICIPALITIES
19 Sec. 505.157. PROJECTS RELATED TO BUSINESS ENTERPRISES
20 IN LANDLOCKED COMMUNITIES
21 Sec. 505.158. PROJECTS RELATED TO BUSINESS DEVELOPMENT
22 IN CERTAIN SMALL MUNICIPALITIES
23 Sec. 505.159. HEARING REQUIRED TO UNDERTAKE PROJECT
24 Sec. 505.160. ELECTION REQUIRED FOR PROJECT; PETITION
25 Sec. 505.161. PUBLIC PURPOSE DESIGNATION; EXEMPTION
26 FROM TAXATION
27 [Sections 505.162-505.200 reserved for expansion]

1 SUBCHAPTER E. SPORTS VENUE PROJECTS AND RELATED INFRASTRUCTURE

2 Sec. 505.201. DEFINITIONS

3 Sec. 505.202. ELECTION: USE OF TAX PROCEEDS FOR
4 SPORTS VENUE PROJECTS

5 Sec. 505.203. PUBLIC HEARING PRECEDING ELECTION

6 Sec. 505.204. LIMITATION ON SUBSEQUENT ELECTION

7 Sec. 505.205. SUBSEQUENT APPROVAL OF ADDITIONAL
8 PROJECTS

9 Sec. 505.206. EFFECT OF SUBCHAPTER ON ELECTION
10 AUTHORITY

11 [Sections 505.207-505.250 reserved for expansion]

12 SUBCHAPTER F. SALES AND USE TAX

13 Sec. 505.251. TAX AUTHORIZED

14 Sec. 505.252. SALES TAX

15 Sec. 505.253. USE TAX

16 Sec. 505.254. SPECIFICATION OF TAX RATE ON BALLOT

17 Sec. 505.255. ADOPTION OF TAX AT ELECTION TO REDUCE

18 OR ABOLISH TAX FOR TYPE A CORPORATION

19 Sec. 505.256. APPLICABILITY OF TAX CODE

20 Sec. 505.257. REDUCTION OF TAX WITHIN REGIONAL

21 TRANSPORTATION AUTHORITY

22 Sec. 505.258. CESSATION OF COLLECTION OF TAXES

23 Sec. 505.259. ELECTION REQUIREMENT FOR CERTAIN
24 MUNICIPALITIES

25 [Sections 505.260-505.300 reserved for expansion]

26 SUBCHAPTER G. USE OF TAX PROCEEDS

27 Sec. 505.301. DELIVERY OF TAX PROCEEDS

1 Sec. 505.302. PAYMENT OF PROJECT COSTS, BONDS, OR
2 OTHER OBLIGATIONS

3 Sec. 505.303. PAYMENT OF MAINTENANCE AND OPERATING
4 COSTS; ELECTION

5 Sec. 505.304. PAYMENT FOR CERTAIN WATER-RELATED
6 PROJECTS: ELECTION REQUIRED

7 Sec. 505.305. PAYMENT FOR CLEANUP OF CONTAMINATED
8 PROPERTY; ELECTION

9 [Sections 505.306-505.350 reserved for expansion]

10 SUBCHAPTER H. TERMINATION OF CORPORATION

11 Sec. 505.351. APPLICABILITY OF SUBCHAPTER

12 Sec. 505.352. ELECTION TO TERMINATE EXISTENCE OF CORPORATION ON
13 PETITION

14 Sec. 505.353. BALLOT

15 Sec. 505.354. TERMINATION OF EXISTENCE OF CORPORATION

16 Sec. 505.355. ELECTION REJECTING TERMINATION

17 CHAPTER 505. TYPE B CORPORATIONS

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 505.001. DEFINITION. In this chapter, "authorizing
20 municipality" means the municipality that authorizes the creation
21 of a Type B corporation. (New.)

22 Sec. 505.002. APPLICABILITY OF CHAPTER. This chapter
23 applies only to:

24 (1) a municipality:

25 (A) that is located in a county with a population
26 of 500,000 or more; and

27 (B) in which the combined rate of all sales and

1 use taxes imposed by the municipality, this state, and other
2 political subdivisions of this state having territory in the
3 municipality does not exceed 8.25 percent on the date of any
4 election held under or made applicable to this chapter;

5 (2) a municipality:

6 (A) that has a population of 400,000 or more;

7 (B) that is located in more than one county; and

8 (C) in which the combined rate of all sales and
9 use taxes imposed by the municipality, this state, and other
10 political subdivisions of this state having territory in the
11 municipality, including taxes imposed under this chapter, does not
12 exceed 8.25 percent; or

13 (3) a municipality to which Chapter 504 applies.
14 (V.A.C.S. Art. 5190.6, Sec. 4B(a)(1).)

15 Sec. 505.003. AUTHORITY TO CREATE CORPORATION. (a) A
16 municipality may authorize the creation under this subtitle of a
17 Type B corporation.

18 (b) A municipality may not authorize the creation of more
19 than one Type B corporation. (V.A.C.S. Art. 5190.6, Sec. 4B(b)
20 (part).)

21 Sec. 505.004. CONTENTS OF CERTIFICATE OF FORMATION. The
22 certificate of formation of a Type B corporation:

23 (1) must state that the corporation is governed by
24 this chapter; and

25 (2) may include in the corporation's name any word or
26 phrase the authorizing municipality specifies. (V.A.C.S. Art.
27 5190.6, Sec. 4B(b) (part).)

1 Sec. 505.005. CORPORATION NOT SUBJECT TO CERTAIN
2 PROVISIONS. Sections 501.203, 501.205, 501.251-501.254,
3 501.255(a) and (b), 501.256, and 501.257 do not apply to a
4 corporation under this chapter. (V.A.C.S. Art. 5190.6, Sec.
5 4B(1).)

6 [Sections 505.006-505.050 reserved for expansion]

7 SUBCHAPTER B. GOVERNANCE OF CORPORATION

8 Sec. 505.051. BOARD OF DIRECTORS. (a) The board of
9 directors of a Type B corporation consists of seven directors.

10 (b) A director is appointed by the governing body of the
11 authorizing municipality for a two-year term.

12 (c) A director may be removed by the governing body of the
13 authorizing municipality at any time without cause. (V.A.C.S. Art.
14 5190.6, Sec. 4B(c) (part).)

15 Sec. 505.052. RESTRICTION ON BOARD MEMBERSHIP. (a) Each
16 director of a Type B corporation authorized to be created by a
17 municipality with a population of 20,000 or more must be a resident
18 of the municipality.

19 (b) Each director of a Type B corporation authorized to be
20 created by a municipality with a population of less than 20,000
21 must:

22 (1) be a resident of the municipality;

23 (2) be a resident of the county in which the major part
24 of the area of the municipality is located; or

25 (3) reside:

26 (A) within 10 miles of the municipality's
27 boundaries; and

1 (B) in a county bordering the county in which
2 most of the area of the municipality is located.

3 (c) Three directors of a Type B corporation must be persons
4 who are not employees, officers, or members of the governing body of
5 the authorizing municipality.

6 (d) Notwithstanding Subsections (a)-(c), if a municipality
7 terminates a Type A corporation's existence and authorizes the
8 creation of a Type B corporation, a person serving as a director of
9 the Type A corporation at the time of termination may serve on the
10 board of directors of the Type B corporation. (V.A.C.S. Art.
11 5190.6, Secs. 4B(c) (part), (e-1).)

12 Sec. 505.053. OFFICERS. The board of directors of a Type B
13 corporation shall appoint:

14 (1) a president;

15 (2) a secretary; and

16 (3) other officers of the corporation the governing
17 body of the authorizing municipality considers necessary.
18 (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

19 Sec. 505.054. QUORUM. A majority of the entire membership
20 of the board of directors of a Type B corporation is a quorum.
21 (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

22 Sec. 505.055. LOCATION OF BOARD MEETINGS. The board of
23 directors of a Type B corporation shall conduct all meetings within
24 the boundaries of the authorizing municipality. (V.A.C.S. Art.
25 5190.6, Sec. 4B(c) (part).)

26 Sec. 505.056. RESTRICTIONS ON REGISTERED AGENT AND OFFICE.

27 (a) The registered agent of a Type B corporation must be an

1 individual who is a resident of this state.

2 (b) The registered office of a Type B corporation must be
3 located within the boundaries of the authorizing municipality.
4 (V.A.C.S. Art. 5190.6, Sec. 4B(c) (part).)

5 [Sections 505.057-505.100 reserved for expansion]

6 SUBCHAPTER C. POWERS AND DUTIES

7 Sec. 505.101. APPLICABILITY OF OTHER LAW; CONFLICTS. A
8 Type B corporation has the powers granted by this chapter and by
9 other chapters of this subtitle and is subject to the limitations of
10 a corporation created under another provision of this subtitle. To
11 the extent of a conflict between this chapter and another provision
12 of this subtitle, this chapter prevails. (V.A.C.S. Art. 5190.6,
13 Sec. 4B(b) (part).)

14 Sec. 505.102. CONTRACT WITH OTHER PRIVATE CORPORATION. A
15 Type B corporation may contract with another private corporation
16 to:

17 (1) carry out an industrial development program or
18 objective; or

19 (2) assist with the development or operation of an
20 economic development program or objective consistent with the
21 purposes and duties specified by this subtitle. (V.A.C.S. Art.
22 5190.6, Sec. 4B(b) (part).)

23 Sec. 505.103. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL
24 PURPOSES. A Type B corporation may spend not more than 10 percent
25 of the corporate revenues for promotional purposes. (V.A.C.S. Art.
26 5190.6, Sec. 4B(b) (part).)

27 Sec. 505.104. BOND REPAYMENT. (a) Bonds or other

1 obligations that mature in 30 years or less and that are issued to
2 pay the costs of projects of a type added to the definition of
3 "project" by Subchapter D may be made payable from any source of
4 funds available to the Type B corporation, including the proceeds
5 of a sales and use tax imposed under this chapter.

6 (b) Bonds or other obligations that by their terms are
7 payable from the tax proceeds:

8 (1) may not be paid wholly or partly from any property
9 taxes imposed or to be imposed by the authorizing municipality; and

10 (2) are not a debt of and do not give rise to a claim
11 for payment against the authorizing municipality, except as to
12 sales and use tax revenue held by the municipality and required
13 under this chapter to be delivered to the Type B corporation.
14 (V.A.C.S. Art. 5190.6, Sec. 4B(h).)

15 Sec. 505.105. EMINENT DOMAIN. A Type B corporation may
16 exercise the power of eminent domain only:

17 (1) on approval of the action by the governing body of
18 the authorizing municipality; and

19 (2) in accordance with and subject to the laws
20 applicable to the authorizing municipality. (V.A.C.S. Art. 5190.6,
21 Sec. 4B(j).)

22 Sec. 505.106. LIABILITY. (a) The following are not liable
23 for damages arising from the performance of a governmental function
24 of a Type B corporation or the authorizing municipality:

25 (1) the corporation;

26 (2) a director of the corporation;

27 (3) the municipality;

1 (4) a member of the governing body of the
2 municipality; or

3 (5) an employee of the corporation or municipality.

4 (b) For purposes of Chapter 101, Civil Practice and Remedies
5 Code, a Type B corporation is a governmental unit and the
6 corporation's actions are governmental functions. (V.A.C.S. Art.
7 5190.6, Sec. 4B(m).)

8 [Sections 505.107-505.150 reserved for expansion]

9 SUBCHAPTER D. AUTHORIZED PROJECTS

10 Sec. 505.151. AUTHORIZED PROJECTS. In this chapter,
11 "project" means land, buildings, equipment, facilities,
12 expenditures, and improvements included in the definition of
13 "project" under Chapter 501, including:

14 (1) job training as provided by Section 501.162; and

15 (2) recycling facilities. (V.A.C.S. Art. 5190.6, Sec.
16 4B(a)(2) (part).)

17 Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR COMMUNITY
18 FACILITIES. For purposes of this chapter, "project" includes land,
19 buildings, equipment, facilities, and improvements found by the
20 board of directors to be required or suitable for use for
21 professional and amateur sports, including children's sports,
22 athletic, entertainment, tourist, convention, and public park
23 purposes and events, including stadiums, ball parks, auditoriums,
24 amphitheaters, concert halls, parks and park facilities, open space
25 improvements, museums, exhibition facilities, and related store,
26 restaurant, concession, and automobile parking facilities, related
27 area transportation facilities, and related roads, streets, and

1 water and sewer facilities, and other related improvements that
2 enhance any of the items described by this section. (V.A.C.S. Art.
3 5190.6, Sec. 4B(a)(2) (part).)

4 Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING. For
5 purposes of this chapter, "project" includes land, buildings,
6 equipment, facilities, and improvements found by the board of
7 directors to be required or suitable for the promotion of
8 development and expansion of affordable housing, as described by 42
9 U.S.C. Section 12745. (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2)
10 (part).)

11 Sec. 505.154. PROJECTS RELATED TO WATER SUPPLY FACILITIES
12 AND WATER CONSERVATION PROGRAMS. For purposes of this chapter,
13 "project" includes land, buildings, equipment, facilities, and
14 improvements found by the board of directors to be required or
15 suitable for:

16 (1) the development or improvement of water supply
17 facilities, including dams, transmission lines, well field
18 developments, and other water supply alternatives; or

19 (2) the development and institution of water
20 conservation programs, including incentives to install
21 water-saving plumbing fixtures, educational programs, brush
22 control programs, and programs to replace malfunctioning or leaking
23 water lines and other water facilities. (V.A.C.S. Art. 5190.6,
24 Sec. 4B(a)(2) (part).)

25 Sec. 505.155. PROJECTS RELATED TO BUSINESS ENTERPRISES THAT
26 CREATE OR RETAIN PRIMARY JOBS. For purposes of this chapter,
27 "project" includes land, buildings, equipment, facilities, and

1 improvements found by the board of directors to promote or develop
2 new or expanded business enterprises that create or retain primary
3 jobs, including:

4 (1) a project to provide public safety facilities,
5 streets and roads, drainage and related improvements, demolition of
6 existing structures, general municipally owned improvements, and
7 any improvements or facilities related to a project described by
8 this subdivision; and

9 (2) any other project that the board of directors in
10 the board's discretion determines promotes or develops new or
11 expanded business enterprises that create or retain primary jobs.
12 (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

13 Sec. 505.156. PROJECTS RELATED TO BUSINESS ENTERPRISES IN
14 CERTAIN MUNICIPALITIES. For purposes of this chapter, "project"
15 includes land, buildings, equipment, facilities, and improvements
16 found by the board of directors to be required or suitable for the
17 development, retention, or expansion of business enterprises if the
18 project is undertaken by a Type B corporation authorized to be
19 created by a municipality:

20 (1) that has not for each of the preceding two fiscal
21 years received more than \$50,000 in revenues from sales and use
22 taxes imposed under this chapter; and

23 (2) the governing body of which has authorized the
24 project by adopting a resolution only after giving the resolution
25 at least two separate readings conducted at least one week apart.
26 (V.A.C.S. Art. 5190.6, Sec. 4B(a)(2) (part).)

27 Sec. 505.157. PROJECTS RELATED TO BUSINESS ENTERPRISES IN

1 LANDLOCKED COMMUNITIES. (a) In this section, "landlocked
2 community" means a municipality that:

3 (1) is wholly or partly located in a county with a
4 population of two million or more; and

5 (2) has within its municipal limits and
6 extraterritorial jurisdiction less than 100 acres that can be used
7 for the development of manufacturing or industrial facilities in
8 accordance with the municipality's zoning laws or land use
9 restrictions.

10 (b) For a landlocked community that authorizes or has
11 authorized the creation of a Type B corporation, "project" also
12 includes expenditures found by the board of directors to be
13 required for the promotion of new or expanded business enterprises
14 in the landlocked community. (V.A.C.S. Art. 5190.6, Sec.
15 4B(a)(4).)

16 Sec. 505.158. PROJECTS RELATED TO BUSINESS DEVELOPMENT IN
17 CERTAIN SMALL MUNICIPALITIES. (a) For a Type B corporation
18 authorized to be created by a municipality with a population of
19 20,000 or less, "project" also includes the land, buildings,
20 equipment, facilities, expenditures, targeted infrastructure, and
21 improvements found by the corporation's board of directors to
22 promote new or expanded business development.

23 (b) A Type B corporation may not undertake a project
24 authorized by this section that requires an expenditure of more
25 than \$10,000 until the governing body of the corporation's
26 authorizing municipality adopts a resolution authorizing the
27 project after giving the resolution at least two separate readings.

1 (V.A.C.S. Art. 5190.6, Sec. 4B(a)(3).)

2 Sec. 505.159. HEARING REQUIRED TO UNDERTAKE PROJECT. A Type
3 B corporation shall hold at least one public hearing on a proposed
4 project before spending money to undertake the project. (V.A.C.S.
5 Art. 5190.6, Sec. 4B(n).)

6 Sec. 505.160. ELECTION REQUIRED FOR PROJECT; PETITION. (a)
7 A Type B corporation may undertake a project under this chapter
8 unless, not later than the 60th day after the date notice of the
9 specific project or general type of project is first published, the
10 governing body of the authorizing municipality receives a petition
11 from more than 10 percent of the registered voters of the
12 municipality requesting that an election be held before the
13 specific project or general type of project is undertaken.

14 (b) The governing body of the authorizing municipality is
15 not required to hold an election after the submission of a petition
16 under Subsection (a) if the voters of the municipality have
17 previously approved the undertaking of the specific project or
18 general type of project:

19 (1) at an election ordered for that purpose by the
20 governing body of the municipality; or

21 (2) in conjunction with another election required
22 under this chapter. (V.A.C.S. Art. 5190.6, Sec. 4B(a-1).)

23 Sec. 505.161. PUBLIC PURPOSE DESIGNATION; EXEMPTION FROM
24 TAXATION. (a) The legislature finds for all constitutional and
25 statutory purposes that:

26 (1) a project of the type added to the definition of
27 "project" by this subchapter is owned, used, and held for a public

1 purpose for and on behalf of the municipality that authorized the
2 creation of the Type B corporation; and

3 (2) except as otherwise provided by this section,
4 Section 501.160 of this subtitle and Section 25.07(a), Tax Code, do
5 not apply to a leasehold or other possessory interest granted by a
6 Type B corporation during the period the corporation owns projects
7 on behalf of the authorizing municipality.

8 (b) A project is exempt from ad valorem taxation under
9 Section 11.11, Tax Code, for the period described by Subsection
10 (a)(2) of this section.

11 (c) This subsection applies only if the voters of the
12 authorizing municipality of a Type B corporation have not approved
13 the adoption of a sales and use tax for the benefit of the
14 corporation under Section 505.251. An ownership, leasehold, or
15 other possessory interest of a person other than the corporation in
16 real property constituting a project of the corporation described
17 by this section:

18 (1) is subject to ad valorem taxation under Section
19 25.07(a), Tax Code; or

20 (2) if the interest was created under an agreement
21 entered into by the corporation before September 1, 1999, is
22 covered by the provisions of the law codified by this section that
23 govern ad valorem taxation of the ownership, leasehold, or other
24 possessory interest that were in effect on the date the agreement
25 was executed. (V.A.C.S. Art. 5190.6, Sec. 4B(k).)

26 [Sections 505.162-505.200 reserved for expansion]

1 SUBCHAPTER E. SPORTS VENUE PROJECTS AND RELATED INFRASTRUCTURE

2 Sec. 505.201. DEFINITIONS. In this subchapter:

3 (1) "Related infrastructure" has the meaning assigned
4 by Section 334.001.

5 (2) "Sports venue" means an arena, coliseum, stadium,
6 or other type of area or facility that is primarily used or is
7 planned for primary use for one or more professional or amateur
8 sports or athletics events and for which a fee is charged or is
9 planned to be charged for admission to the sports or athletics
10 events, other than occasional civic, charitable, or promotional
11 events. The term does not include an arena, coliseum, stadium, or
12 other type of area or facility that is or will be owned and operated
13 by a state-supported institution of higher education. (V.A.C.S.
14 Art. 5190.6, Sec. 4B(a-4).)

15 Sec. 505.202. ELECTION: USE OF TAX PROCEEDS FOR SPORTS
16 VENUE PROJECTS. (a) An authorizing municipality may submit to the
17 voters of the municipality a ballot proposition that authorizes the
18 Type B corporation to use the sales and use tax, including any
19 amount previously authorized and collected, for a specific sports
20 venue project, including related infrastructure, or for a specific
21 category of sports venue projects, including related
22 infrastructure.

23 (b) The project or category of projects described by
24 Subsection (a) must be clearly described on the ballot so that a
25 voter is able to discern the limits of the specific project or
26 category of projects authorized by the proposition. If maintenance
27 and operating costs of an otherwise authorized facility are to be

1 paid from the sales and use tax, the ballot language must clearly
2 state that fact.

3 (c) The authorizing municipality may submit the ballot
4 proposition at:

5 (1) an election held under another provision of this
6 subtitle, including the election at which the proposition to
7 initially approve the adoption of a sales and use tax for the
8 benefit of the Type B corporation is submitted; or

9 (2) a separate election to be held on a uniform
10 election date. (V.A.C.S. Art. 5190.6, Secs. 4B(a-3)(1) (part),
11 (2).)

12 Sec. 505.203. PUBLIC HEARING PRECEDING ELECTION. Before an
13 election may be held under Section 505.202, a public hearing must be
14 held in the authorizing municipality to inform the municipality's
15 residents of the cost and impact of the project or category of
16 projects. At least 30 days before the date set for the hearing,
17 notice of the date, time, place, and subject of the hearing must be
18 published each week until the date of the hearing in a newspaper
19 with general circulation in the municipality in which the project
20 is located. (V.A.C.S. Art. 5190.6, Sec. 4B(a-3)(3).)

21 Sec. 505.204. LIMITATION ON SUBSEQUENT ELECTION. If a
22 majority of the voters voting on the issue do not approve a specific
23 sports venue project or a specific category of sports venue
24 projects at an election under Section 505.202, another election
25 concerning the same project or category of projects may not be held
26 before the first anniversary of the date of the most recent election
27 disapproving the project or category of projects. (V.A.C.S. Art.

1 5190.6, Sec. 4B(a-3)(4).)

2 Sec. 505.205. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS.
3 Prior approval of a specific sports venue project at an election or
4 completion of a specific sports venue project approved at an
5 election does not prevent an authorizing municipality from seeking
6 voter approval of an additional project or category of projects
7 under this subchapter to be funded from the same sales and use tax
8 that is used to fund the previously approved sports venue project.
9 (V.A.C.S. Art. 5190.6, Secs. 4B(a-3)(1) (part).)

10 Sec. 505.206. EFFECT OF SUBCHAPTER ON ELECTION AUTHORITY.
11 This subchapter does not affect an authorizing municipality's
12 authority to call an election under this chapter to impose a sales
13 and use tax for any purpose authorized by this chapter after the
14 sales and use tax described by this subchapter is, in accordance
15 with Section 505.258, no longer collected. (V.A.C.S. Art. 5190.6,
16 Sec. 4B(a-3)(1) (part).)

17 [Sections 505.207-505.250 reserved for expansion]

18 SUBCHAPTER F. SALES AND USE TAX

19 Sec. 505.251. TAX AUTHORIZED. The governing body of the
20 authorizing municipality by ordinance may adopt a sales and use tax
21 for the benefit of a Type B corporation if the tax is approved by a
22 majority of the voters of the municipality voting at an election
23 held for that purpose in accordance with Chapter 321, Tax Code.
24 (V.A.C.S. Art. 5190.6, Sec. 4B(d) (part).)

25 Sec. 505.252. SALES TAX. (a) If the authorizing
26 municipality adopts the tax under Section 505.251, a tax is imposed
27 on the receipts from the sale at retail of taxable items within the

1 municipality at the rate approved at the election.

2 (b) The rate of a tax adopted under this chapter must be
3 equal to one-eighth, one-fourth, three-eighths, or one-half of one
4 percent. (V.A.C.S. Art. 5190.6, Sec. 4B(e) (part).)

5 Sec. 505.253. USE TAX. (a) If the authorizing municipality
6 adopts the tax under Section 505.251, an excise tax is imposed on
7 the use, storage, or other consumption within the municipality of
8 tangible personal property purchased, leased, or rented from a
9 retailer during the period that the tax is effective within the
10 municipality.

11 (b) The rate of the excise tax is the same as the rate of the
12 sales tax portion of the sales and use tax and is applied to the sale
13 price of the tangible personal property. (V.A.C.S. Art. 5190.6,
14 Sec. 4B(e) (part).)

15 Sec. 505.254. SPECIFICATION OF TAX RATE ON BALLOT. In an
16 election held to adopt the sales and use tax under this chapter, the
17 ballot proposition must specify the rate of the tax to be adopted.
18 (V.A.C.S. Art. 5190.6, Sec. 4B(e) (part).)

19 Sec. 505.255. ADOPTION OF TAX AT ELECTION TO REDUCE OR
20 ABOLISH TAX FOR TYPE A CORPORATION. A municipality that holds an
21 election to reduce the rate of or abolish a tax imposed under
22 Chapter 504 may in the same proposition or in a separate proposition
23 on the same ballot adopt a tax under this chapter. (V.A.C.S. Art.
24 5190.6, Sec. 4B(e) (part).)

25 Sec. 505.256. APPLICABILITY OF TAX CODE. (a) Chapter 321,
26 Tax Code, governs the imposition, computation, administration,
27 collection, and remittance of the sales and use tax, except as

1 inconsistent with this chapter.

2 (b) Except as provided by this subsection, the tax imposed
3 under this chapter takes effect as provided by Section 321.102(a),
4 Tax Code. If an election is held under this chapter at the same time
5 an election is held to impose or change the rate of the additional
6 municipal sales and use tax, the tax under this chapter and the
7 imposition or change in rate of the additional municipal sales and
8 use tax take effect as provided by Section 321.102(b), Tax Code.

9 (c) After the effective date of the taxes imposed under this
10 chapter, the adoption of a sales and use tax or the attempted
11 adoption of a sales and use tax by the authorizing municipality or
12 another taxing jurisdiction having territory in the municipality
13 does not impair the taxes imposed under this chapter. (V.A.C.S.
14 Art. 5190.6, Sec. 4B(f).)

15 Sec. 505.257. REDUCTION OF TAX WITHIN REGIONAL
16 TRANSPORTATION AUTHORITY. Notwithstanding any other provision of
17 this chapter, a tax imposed under this chapter by an authorizing
18 municipality that is located within the territorial limits of a
19 regional transportation authority and that has been added to the
20 territory of the authority under Section 452.6025, Transportation
21 Code, is subject to reduction in the manner prescribed by Section
22 452.6025, Transportation Code. (V.A.C.S. Art. 5190.6, Sec.
23 4B(n-1).)

24 Sec. 505.258. CESSATION OF COLLECTION OF TAXES. A sales and
25 use tax imposed under this chapter may not be collected after the
26 last day of the first calendar quarter that occurs after the Type B
27 corporation notifies the comptroller that:

1 (1) all bonds or other obligations of the corporation,
2 including any refunding bonds, payable wholly or partly from the
3 proceeds of the sales and use tax imposed under this chapter, have
4 been paid in full; or

5 (2) the total amount, exclusive of guaranteed
6 interest, necessary to pay in full the bonds and other obligations
7 has been set aside in a trust account dedicated to the payment of
8 the bonds and other obligations. (V.A.C.S. Art. 5190.6, Sec.
9 4B(i).)

10 Sec. 505.259. ELECTION REQUIREMENT FOR CERTAIN
11 MUNICIPALITIES. The election requirement under Section 505.251 is
12 satisfied and another election is not required if the voters of the
13 authorizing municipality approved the imposition of an additional
14 one-half cent sales and use tax at an election held before March 28,
15 1991, under an ordinance calling the election that:

16 (1) was published in a newspaper of general
17 circulation in the municipality at least 14 days before the date of
18 the election; and

19 (2) expressly stated that the election was being held
20 in anticipation of the enactment of enabling and implementing
21 legislation without further elections. (V.A.C.S. Art. 5190.6, Sec.
22 4B(d) (part).)

23 [Sections 505.260-505.300 reserved for expansion]

24 SUBCHAPTER G. USE OF TAX PROCEEDS

25 Sec. 505.301. DELIVERY OF TAX PROCEEDS. On the authorizing
26 municipality's receipt from the comptroller of the proceeds of the
27 sales and use tax imposed under this chapter, the authorizing

1 municipality shall deliver the proceeds to the Type B corporation.
2 (V.A.C.S. Art. 5190.6, Sec. 4B(g) (part).)

3 Sec. 505.302. PAYMENT OF PROJECT COSTS, BONDS, OR OTHER
4 OBLIGATIONS. The proceeds of the sales and use tax imposed under
5 this chapter may be used to:

6 (1) pay the costs of projects of the types added to the
7 definition of "project" by Subchapter D; or

8 (2) pay the principal of, interest on, and other costs
9 relating to bonds or other obligations issued by the Type B
10 corporation to:

11 (A) pay the costs of the projects; or

12 (B) refund bonds or other obligations issued to
13 pay the costs of projects. (V.A.C.S. Art. 5190.6, Sec. 4B(g)
14 (part).)

15 Sec. 505.303. PAYMENT OF MAINTENANCE AND OPERATING COSTS;
16 ELECTION. (a) The costs of a publicly owned and operated project
17 purchased or constructed under this chapter include the maintenance
18 and operating costs of the project.

19 (b) The proceeds of taxes may be used to pay the maintenance
20 and operating costs of a project, unless not later than the 60th day
21 after the date notice of the specific use of the tax proceeds is
22 first published, the governing body of the authorizing municipality
23 of the Type B corporation undertaking the project receives a
24 petition from more than 10 percent of the registered voters of the
25 municipality requesting that an election be held before the tax
26 proceeds may be used to pay the maintenance and operating costs of a
27 project.

1 (c) The governing body of the authorizing municipality is
2 not required to hold an election after the submission of a petition
3 under Subsection (b) if the voters of the municipality have
4 previously approved at an election ordered for that purpose by the
5 governing body or in conjunction with another election required
6 under this chapter that:

7 (1) the costs of a publicly owned and operated project
8 purchased or constructed under this chapter include the maintenance
9 and operating costs of the project; and

10 (2) the tax proceeds may be used to pay the maintenance
11 and operating costs of a project.

12 (d) An authorizing municipality is not required to hold an
13 election under this section if the municipality:

14 (1) is located in a county with a population of more
15 than 1.3 million; and

16 (2) has held before February 1, 1993, an election
17 under this chapter at which the additional sales tax was approved.
18 (V.A.C.S. Art. 5190.6, Sec. 4B(a-2).)

19 Sec. 505.304. PAYMENT FOR CERTAIN WATER-RELATED PROJECTS:
20 ELECTION REQUIRED. (a) A Type B corporation may not use proceeds
21 from the sales and use tax to undertake a project described by
22 Section 505.154 unless the use of tax proceeds for that purpose is
23 authorized by a majority of the voters voting at an election held in
24 the municipality for that purpose.

25 (b) The ballot in an election held under this section shall
26 be printed to provide for voting for or against the proposition:
27 "The use of sales and use tax proceeds for infrastructure relating

1 to _____ (insert water supply facilities or water conservation
2 programs, as appropriate)."

3 (c) An election held under this section may be authorized by
4 the governing body of an authorizing municipality subsequent to an
5 earlier election authorized under Section 505.251. (V.A.C.S. Art.
6 5190.6, Sec. 4B(a-5).)

7 Sec. 505.305. PAYMENT FOR CLEANUP OF CONTAMINATED PROPERTY;
8 ELECTION. (a) The economic development office, with the
9 assistance of the Texas Commission on Environmental Quality, may
10 encourage a Type B corporation to use proceeds from the sales and
11 use tax imposed under this chapter for the cleanup of contaminated
12 property.

13 (b) Notwithstanding any other provision of this chapter, a
14 Type B corporation may use proceeds from the sales and use tax for
15 the cleanup of contaminated property only if the use of tax proceeds
16 for that purpose is authorized by a majority of the voters voting at
17 an election held in the authorizing municipality for that purpose.
18 The ballot in an election held under this subsection shall be
19 printed to provide for voting for or against the proposition: "The
20 use of sales and use tax proceeds for the cleanup of contaminated
21 property." (V.A.C.S. Art. 5190.6, Sec. 4B(p).)

22 [Sections 505.306-505.350 reserved for expansion]

23 SUBCHAPTER H. TERMINATION OF CORPORATION

24 Sec. 505.351. APPLICABILITY OF SUBCHAPTER. This subchapter
25 applies only to a Type B corporation created on or after September
26 1, 1999. (Acts 76th Leg., R.S., Ch. 21, Sec. 2 (part).)

27 Sec. 505.352. ELECTION TO TERMINATE EXISTENCE OF

1 CORPORATION ON PETITION. (a) The governing body of an authorizing
2 municipality shall order an election on the termination of the
3 existence of the Type B corporation on receipt of a petition
4 requesting the election that is signed by at least 10 percent of the
5 registered voters of the municipality.

6 (b) The authorizing municipality shall hold the election on
7 the first available uniform election date that occurs after the
8 time required by Section 3.005, Election Code. (V.A.C.S. Art.
9 5190.6, Sec. 4B(o)(1).)

10 Sec. 505.353. BALLOT. The ballot for an election held under
11 Section 505.352 shall be printed to permit voting for or against the
12 proposition: "Termination of the _____ (name of
13 corporation)." (V.A.C.S. Art. 5190.6, Sec. 4B(o)(2).)

14 Sec. 505.354. TERMINATION OF EXISTENCE OF CORPORATION. (a)
15 If a majority of the votes cast at an election held under Section
16 505.352 approve the termination, the Type B corporation shall:

17 (1) continue operations only as necessary to meet the
18 obligations the corporation incurred before the date of the
19 election, including paying the principal of and interest on the
20 corporation's bonds; and

21 (2) liquidate the corporation's assets and apply the
22 proceeds to satisfy the corporation's obligations, to the extent
23 practicable.

24 (b) After the Type B corporation has satisfied all of the
25 corporation's obligations, any remaining assets of the corporation
26 shall be transferred to the authorizing municipality, and the
27 existence of the corporation is terminated.

1 (c) The authorizing municipality shall promptly notify the
2 comptroller and the secretary of state of the date the existence of
3 a Type B corporation is terminated under this subchapter.

4 (d) A tax imposed under this chapter may not be collected
5 after the last day of the first calendar quarter that begins after
6 the authorizing municipality provides notice under Subsection (c).
7 (V.A.C.S. Art. 5190.6, Secs. 4B(o)(3), (4).)

8 Sec. 505.355. ELECTION REJECTING TERMINATION. If less than
9 a majority of the votes cast at an election held under Section
10 505.352 approve the termination, Section 505.354 has no effect.
11 (V.A.C.S. Art. 5190.6, Sec. 4B(o)(5).)

12 CHAPTER 506. COUNTY ALLIANCE CORPORATIONS

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 506.001. DEFINITION

15 Sec. 506.002. CREATION OF COUNTY ALLIANCE; AUTHORITY
16 TO CREATE CORPORATION

17 Sec. 506.003. STATUS OF COUNTY ALLIANCE AS SINGLE UNIT

18 Sec. 506.004. APPLICABILITY OF SUBTITLE

19 [Sections 506.005-506.050 reserved for expansion]

20 SUBCHAPTER B. GOVERNANCE OF CORPORATION

21 Sec. 506.051. APPOINTMENT OF DIRECTORS; TERM

22 Sec. 506.052. NO COMPENSATION; REIMBURSEMENT FOR
23 EXPENSES

24 Sec. 506.053. REMOVAL OF DIRECTOR

25 [Sections 506.054-506.100 reserved for expansion]

1 SUBCHAPTER C. MEMBERSHIP IN COUNTY ALLIANCE

2 Sec. 506.101. MEMBERSHIP IN ESTABLISHED COUNTY
3 ALLIANCE

4 Sec. 506.102. WITHDRAWAL FROM COUNTY ALLIANCE

5 [Sections 506.103-506.150 reserved for expansion]

6 SUBCHAPTER D. FINANCIAL PROVISIONS

7 Sec. 506.151. DISTRIBUTION OF NET EARNINGS

8 [Sections 506.152-506.200 reserved for expansion]

9 SUBCHAPTER E. TERMINATION OF CORPORATION

10 Sec. 506.201. EFFECT OF WITHDRAWAL OF COUNTY

11 Sec. 506.202. DISTRIBUTION OF ASSETS

12 CHAPTER 506. COUNTY ALLIANCE CORPORATIONS

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 506.001. DEFINITION. In this chapter, "county
15 alliance corporation" means the corporation authorized to be
16 created by a county alliance. (New.)

17 Sec. 506.002. CREATION OF COUNTY ALLIANCE; AUTHORITY TO
18 CREATE CORPORATION. Two or more counties that are adjacent or in
19 close proximity, as determined by the commissioners courts of the
20 counties involved, may establish a county alliance to authorize the
21 creation of a corporation. (V.A.C.S. Art. 5190.6, Sec. 4D(a)
22 (part), as added Acts 76th Leg., R.S., Ch. 973.)

23 Sec. 506.003. STATUS OF COUNTY ALLIANCE AS SINGLE UNIT. For
24 purposes of this subtitle, a county alliance is considered a single
25 unit. (V.A.C.S. Art. 5190.6, Sec. 4D(a) (part), as added Acts 76th
26 Leg., R.S., Ch. 973.)

27 Sec. 506.004. APPLICABILITY OF SUBTITLE. The provisions of

1 this subtitle outside of this chapter apply to a county alliance and
2 to a county alliance corporation, except to the extent inconsistent
3 with this chapter or another provision of this subtitle that
4 expressly applies to a county alliance or to a county alliance
5 corporation. (V.A.C.S. Art. 5190.6, Sec. 4D(a) (part), as added
6 Acts 76th Leg., R.S., Ch. 973.)

7 [Sections 506.005-506.050 reserved for expansion]

8 SUBCHAPTER B. GOVERNANCE OF CORPORATION

9 Sec. 506.051. APPOINTMENT OF DIRECTORS; TERM. (a) The
10 board of directors of a county alliance corporation consists of
11 directors appointed by the commissioners court of each county in
12 the alliance as follows:

13 (1) three directors from each county if the alliance
14 includes 10 or fewer counties; or

15 (2) two directors from each county if the alliance
16 includes more than 10 counties.

17 (b) A director may not serve more than six years. (V.A.C.S.
18 Art. 5190.6, Sec. 4D(b) (part), as added Acts 76th Leg., R.S., Ch.
19 973.)

20 Sec. 506.052. NO COMPENSATION; REIMBURSEMENT FOR EXPENSES.
21 A director serves without compensation but is entitled to
22 reimbursement for expenses incurred in the performance of the
23 director's duties. (V.A.C.S. Art. 5190.6, Sec. 4D(b) (part), as
24 added Acts 76th Leg., R.S., Ch. 973.)

25 Sec. 506.053. REMOVAL OF DIRECTOR. A director is subject to
26 removal at the will of the appointing county. (V.A.C.S. Art.
27 5190.6, Sec. 4D(b) (part), as added Acts 76th Leg., R.S., Ch. 973.)

1 [Sections 506.054-506.100 reserved for expansion]

2 SUBCHAPTER C. MEMBERSHIP IN COUNTY ALLIANCE

3 Sec. 506.101. MEMBERSHIP IN ESTABLISHED COUNTY ALLIANCE. A
4 county may become a member of an established county alliance that
5 has authorized the creation of a county alliance corporation. The
6 county becomes a member of the county alliance if:

7 (1) the commissioners court of the county proposing to
8 join the county alliance petitions the board of directors of the
9 established county alliance corporation for admission;

10 (2) the board approves the admission of the
11 petitioning county; and

12 (3) the petitioning county:

13 (A) agrees to abide by the bylaws of the county
14 alliance corporation;

15 (B) pays a fee to the county alliance as
16 determined by the board; and

17 (C) meets any other requirement established by
18 the board. (V.A.C.S. Art. 5190.6, Sec. 4D(c), as added Acts 76th
19 Leg., R.S., Ch. 973.)

20 Sec. 506.102. WITHDRAWAL FROM COUNTY ALLIANCE. (a) A
21 county may withdraw from a county alliance if all of the county's
22 obligations and entitlements relating to the county alliance
23 corporation have been properly settled.

24 (b) The county withdrawing from the county alliance may not
25 receive any assets, including money or other property, of the
26 county alliance corporation until the existence of the corporation
27 is terminated as provided by Section 506.202. (V.A.C.S. Art.

1 5190.6, Sec. 4D(e) (part), as added Acts 76th Leg., R.S., Ch. 973.)

2 [Sections 506.103-506.150 reserved for expansion]

3 SUBCHAPTER D. FINANCIAL PROVISIONS

4 Sec. 506.151. DISTRIBUTION OF NET EARNINGS. If the board of
5 directors of a county alliance corporation determines that
6 sufficient provisions have been made to pay the corporation's
7 expenses, bonds, and other obligations, any net earnings may be
8 distributed among the counties in the county alliance as a
9 percentage of the per capita contributions made by each of the
10 counties during the corporation's existence. (V.A.C.S. Art.
11 5190.6, Sec. 4D(d), as added Acts 76th Leg., R.S., Ch. 973.)

12 [Sections 506.152-506.200 reserved for expansion]

13 SUBCHAPTER E. TERMINATION OF CORPORATION

14 Sec. 506.201. EFFECT OF WITHDRAWAL OF COUNTY. A county
15 alliance corporation is not required to terminate its existence as
16 a result of the withdrawal of a county from the county alliance if
17 at least two counties remain in the county alliance. (V.A.C.S. Art.
18 5190.6, Sec. 4D(g), as added Acts 76th Leg., R.S., Ch. 973.)

19 Sec. 506.202. DISTRIBUTION OF ASSETS. (a) Subject to
20 Subsection (b), on termination of the existence of a county
21 alliance corporation, any assets of the corporation remaining after
22 all the corporation's obligations have been met shall be
23 distributed among the counties in the county alliance as a
24 percentage of the per capita contributions made by each of the
25 counties during the corporation's existence.

26 (b) A county that withdraws from a county alliance is
27 entitled to receive a distribution under Subsection (a) that is

1 reduced by one percent for each year the corporation operated
2 without the county's membership in the alliance. (V.A.C.S. Art.
3 5190.6, Secs. 4D(e) (part), (f), as added Acts 76th Leg., R.S., Ch.
4 973.)

5 CHAPTER 507. SPACEPORT DEVELOPMENT CORPORATIONS

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 507.001. DEFINITIONS

8 Sec. 507.002. SCOPE OF PROJECT

9 Sec. 507.003. AUTHORITY TO CREATE CORPORATION

10 BY ELIGIBLE ENTITIES

11 Sec. 507.004. CONTENTS OF CERTIFICATE OF FORMATION

12 Sec. 507.005. CORPORATION NOT SUBJECT TO CERTAIN

13 PROVISIONS

14 Sec. 507.006. CONFLICTS OF LAW

15 [Sections 507.007-507.050 reserved for expansion]

16 SUBCHAPTER B. GOVERNANCE OF CORPORATION

17 Sec. 507.051. BOARD OF DIRECTORS

18 Sec. 507.052. OFFICERS

19 Sec. 507.053. MEETINGS

20 [Sections 507.054-507.100 reserved for expansion]

21 SUBCHAPTER C. POWERS AND DUTIES

22 Sec. 507.101. GENERAL POWERS AND LIMITATIONS OF

23 CORPORATION

24 Sec. 507.102. ACQUISITION, MORTGAGE, OR DISPOSAL OF

25 PROPERTY

26 Sec. 507.103. EMINENT DOMAIN

27 Sec. 507.104. CONTRACTS

- 1 Sec. 507.105. GENERAL POWERS RELATED TO FINANCES
- 2 Sec. 507.106. DONATIONS, GRANTS, AND LOANS
- 3 Sec. 507.107. AUTHORITY TO SUE AND BE SUED
- 4 Sec. 507.108. HIGHER EDUCATION COURSES AND DEGREE
- 5 PROGRAMS

6 [Sections 507.109-507.150 reserved for expansion]

7 SUBCHAPTER D. BONDS

- 8 Sec. 507.151. AUTHORITY TO ISSUE BONDS; APPROVAL
- 9 Sec. 507.152. BONDS NOT OBLIGATION OF CERTAIN ENTITIES
- 10 Sec. 507.153. BOND REQUIREMENTS

11 [Sections 507.154-507.200 reserved for expansion]

12 SUBCHAPTER E. TAXES

- 13 Sec. 507.201. EXEMPTION FROM CERTAIN TAXES
- 14 Sec. 507.202. PAYMENT IN LIEU OF AD VALOREM TAXES

15 CHAPTER 507. SPACEPORT DEVELOPMENT CORPORATIONS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 507.001. DEFINITIONS. In this chapter:

18 (1) "Authorizing entity" means the political
19 subdivision or combination of political subdivisions that
20 authorizes the creation of a spaceport development corporation as
21 permitted under Section 507.003.

22 (2) "Spacecraft" includes a satellite.

23 (3) "Spaceport" includes:

24 (A) an area intended to be used to launch or land
25 a spacecraft;

26 (B) a spaceport building or facility located on
27 an area appurtenant to a launching or landing area;

1 (C) an area appurtenant to a launching or landing
2 area that is intended for use for a spaceport building or facility;
3 and

4 (D) a right-of-way related to a launching or
5 landing area, building, facility, or other area that is appurtenant
6 to a launching or landing area.

7 (4) "Spaceport development corporation" means a
8 corporation governed by this chapter. (V.A.C.S. Art. 5190.6, Secs.
9 4D(a)(3), (4), as added Acts 76th Leg., R.S., Ch. 1537, Secs.
10 4E(a)(3), (4); New.)

11 Sec. 507.002. SCOPE OF PROJECT. For purposes of a spaceport
12 development corporation, in addition to land, buildings,
13 equipment, facilities, and improvements that constitute a project
14 under Chapter 501, "project" includes the land, buildings,
15 equipment, facilities, and improvements found by the board of
16 directors of the corporation to:

17 (1) be required or suitable for use for the promotion
18 or development of a spaceport, related area transportation
19 facilities, automobile parking facilities, and related roads,
20 streets, and water and sewer facilities, and other related
21 improvements that enhance the spaceport or another item specified
22 by this subdivision;

23 (2) promote or develop new or expanded business
24 enterprises relating to a spaceport;

25 (3) promote or develop educational programs or job
26 training relating to a spaceport; or

27 (4) be required or suitable for the promotion of

1 development and expansion of affordable housing, as defined by 42
2 U.S.C. Section 12745, relating to a spaceport. (V.A.C.S. Art.
3 5190.6, Sec. 4D(a)(2), as added Acts 76th Leg., R.S., Ch. 1537, Sec.
4 4E(a)(2).)

5 Sec. 507.003. AUTHORITY TO CREATE CORPORATION BY ELIGIBLE
6 ENTITIES. The following entities are eligible to authorize the
7 creation under this subtitle of a spaceport development
8 corporation:

9 (1) a county; or

10 (2) a combination of one or more municipalities and
11 one or more counties. (V.A.C.S. Art. 5190.6, Secs. 4D(a)(1), (c)
12 (part), as added Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(a)(1), (b)
13 (part).)

14 Sec. 507.004. CONTENTS OF CERTIFICATE OF FORMATION. The
15 certificate of formation of a spaceport development corporation:

16 (1) must state that the corporation is governed by
17 this chapter; and

18 (2) may include in the corporation's name any word or
19 phrase the authorizing entity specifies. (V.A.C.S. Art. 5190.6,
20 Sec. 4D(c) (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec.
21 4E(b) (part).)

22 Sec. 507.005. CORPORATION NOT SUBJECT TO CERTAIN
23 PROVISIONS. Sections 501.203, 501.205, 501.251-254, 501.255(a)
24 and (b), 501.256, and 501.257 do not apply to a corporation under
25 this chapter. (V.A.C.S. Art. 5190.6, Sec. 4D(n), as added Acts 76th
26 Leg., R.S., Ch. 1537, Sec. 4E(1).)

27 Sec. 507.006. CONFLICTS OF LAW. To the extent of any

1 conflict between this chapter and any other provision of this
2 subtitle, this chapter prevails. (V.A.C.S. Art. 5190.6, Sec.
3 4D(b), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(b) (part).)

4 [Sections 507.007-507.050 reserved for expansion]

5 SUBCHAPTER B. GOVERNANCE OF CORPORATION

6 Sec. 507.051. BOARD OF DIRECTORS. (a) A spaceport
7 development corporation is governed by a board of seven directors.

8 (b) If a single county authorizes the creation of a
9 spaceport development corporation, the commissioners court of the
10 county shall appoint the directors of the corporation. If more than
11 one political subdivision authorizes the creation of a spaceport
12 development corporation, the governing bodies of the political
13 subdivisions shall appoint the directors through written agreement
14 between the governing bodies.

15 (c) Each director serves a two-year term that expires June 1
16 of each odd-numbered year, except that three or four of the initial
17 directors may serve a one-year term so that the terms may be
18 staggered in the future. (V.A.C.S. Art. 5190.6, Sec. 4D(d) (part),
19 as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(g) (part).)

20 Sec. 507.052. OFFICERS. (a) The board of directors of a
21 spaceport development corporation shall elect a presiding officer
22 from among its members.

23 (b) The board of directors by rule may provide for the
24 election of other officers. (V.A.C.S. Art. 5190.6, Sec. 4D(d)
25 (part), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(g) (part).)

26 Sec. 507.053. MEETINGS. The board of directors of a
27 spaceport development corporation shall meet:

- 1 (1) at least once every three months; and
2 (2) at the call of the presiding officer or a majority
3 of the directors. (V.A.C.S. Art. 5190.6, Sec. 4D(d) (part), as
4 added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(g) (part).)

5 [Sections 507.054-507.100 reserved for expansion]

6 SUBCHAPTER C. POWERS AND DUTIES

7 Sec. 507.101. GENERAL POWERS AND LIMITATIONS OF
8 CORPORATION. A spaceport development corporation:

- 9 (1) has the powers granted by this chapter and by other
10 chapters of this subtitle; and
11 (2) is subject to the limitations of a corporation
12 authorized to be created under another provision of this subtitle.
13 (V.A.C.S. Art. 5190.6, Sec. 4D(c) (part), as added Acts 76th Leg.,
14 R.S., Ch. 1537, Sec. 4E(b) (part).)

15 Sec. 507.102. ACQUISITION, MORTGAGE, OR DISPOSAL OF
16 PROPERTY. (a) A spaceport development corporation may acquire
17 property but only if a site in the territory of the authorizing
18 entity has been designated as the site for a spaceport.

- 19 (b) A spaceport development corporation may:
20 (1) mortgage property; or
21 (2) convey or otherwise dispose of property.
22 (V.A.C.S. Art. 5190.6, Secs. 4D(e) (part), (f) (part), as added
23 Acts 76th Leg., R.S., Ch. 1537, Secs. 4E(c) (part), (d) (part).)

24 Sec. 507.103. EMINENT DOMAIN. (a) A spaceport development
25 corporation may exercise the power of eminent domain to acquire
26 property for a spaceport, including the power to:

- 27 (1) acquire fee title in land condemned;

1 (2) relocate or modify a railroad, utility line,
2 pipeline, or other facility that may interfere with a spaceport; or

3 (3) impose a reasonable restriction on using the
4 surface of the property for mineral development if the corporation
5 does not own the mineral rights.

6 (b) Before exercising the power of eminent domain under this
7 chapter, a spaceport development corporation must obtain a
8 resolution approving the proposed condemnation from the governing
9 body of a county or municipality in which the property is located.
10 For purposes of this chapter, territory in the extraterritorial
11 jurisdiction of a municipality is considered to be in the
12 jurisdiction of the municipality.

13 (c) Chapter 21, Property Code, governs the exercise of the
14 power of eminent domain by a spaceport development corporation.
15 (V.A.C.S. Art. 5190.6, Secs. 4D(e) (part), (g), as added Acts 76th
16 Leg., R.S., Ch. 1537, Secs. 4E(c) (part), (e).)

17 Sec. 507.104. CONTRACTS. (a) Except as provided by
18 Subsection (b), a spaceport development corporation may enter into:

19 (1) an agreement with any person; or
20 (2) an interlocal contract under Chapter 791,
21 Government Code.

22 (b) A spaceport development corporation may not enter into a
23 contract to operate a spaceport unless the agreement provides that
24 the person contracting with the corporation assumes the
25 corporation's liability for a cause of action arising from
26 environmental damage. (V.A.C.S. Art. 5190.6, Sec. 4D(h) (part), as
27 added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(f) (part).)

1 Sec. 507.105. GENERAL POWERS RELATED TO FINANCES. A
2 spaceport development corporation may:

3 (1) impose a charge for using a spaceport or a service
4 the corporation provides;

5 (2) borrow money;

6 (3) loan money to fund a spaceport; and

7 (4) invest money under the corporation's control in an
8 investment authorized by Chapter 2256, Government Code. (V.A.C.S.
9 Art. 5190.6, Sec. 4D(k) (part), as added Acts 76th Leg., R.S., Ch.
10 1537, Sec. 4E(i) (part).)

11 Sec. 507.106. DONATIONS, GRANTS, AND LOANS. A spaceport
12 development corporation may accept a donation, grant, or loan from
13 any person. (V.A.C.S. Art. 5190.6, Sec. 4D(h) (part), as added Acts
14 76th Leg., R.S., Ch. 1537, Sec. 4E(f) (part).)

15 Sec. 507.107. AUTHORITY TO SUE AND BE SUED. A spaceport
16 development corporation may sue and be sued. (V.A.C.S. Art. 5190.6,
17 Sec. 4D(i), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(f)
18 (part).)

19 Sec. 507.108. HIGHER EDUCATION COURSES AND DEGREE PROGRAMS.
20 (a) The board of directors of a spaceport development corporation
21 by rule may develop a plan for higher education courses and degree
22 programs to be offered at or near a spaceport.

23 (b) A course or degree program offered under this section
24 must be related to the purposes of this chapter.

25 (c) The aerospace and aviation office of the Texas Economic
26 Development and Tourism Office and the Texas Higher Education
27 Coordinating Board shall cooperate with and advise the board of

1 directors in carrying out this section. (V.A.C.S. Art. 5190.6,
2 Sec. 4D(j), as added Acts 76th Leg., R.S., Ch. 1537, Sec. 4E(h).)

3 [Sections 507.109-507.150 reserved for expansion]

4 SUBCHAPTER D. BONDS

5 Sec. 507.151. AUTHORITY TO ISSUE BONDS; APPROVAL. (a) A
6 spaceport development corporation may issue bonds only if a site in
7 the territory of the authorizing entity has been designated as the
8 site for a spaceport.

9 (b) Bonds issued under this chapter must be approved by the
10 governing body of each political subdivision that authorized
11 creation of the spaceport development corporation. (V.A.C.S. Art.
12 5190.6, Secs. 4D(f) (part), (k) (part), (m) (part), as added Acts
13 76th Leg., R.S., Ch. 1537, Secs. 4E(d) (part), (i) (part), (k)
14 (part).)

15 Sec. 507.152. BONDS NOT OBLIGATION OF CERTAIN ENTITIES.
16 Bonds issued by a spaceport development corporation are not an
17 obligation or a pledge of the faith and credit of this state, a
18 political subdivision that authorized the creation of the
19 corporation, or another political subdivision or agency of this
20 state. (V.A.C.S. Art. 5190.6, Sec. 4D(m) (part), as added Acts 76th
21 Leg., R.S., Ch. 1537, Sec. 4E(k) (part).)

22 Sec. 507.153. BOND REQUIREMENTS. Bonds issued under this
23 chapter must:

24 (1) be payable only from the revenue of a spaceport
25 developed by the spaceport development corporation issuing the
26 bonds;

27 (2) mature not later than 50 years after the date of

1 issuance; and

2 (3) state on their faces that the bonds are not an
3 obligation of the State of Texas or a political subdivision of this
4 state, other than the corporation that issued the bonds. (V.A.C.S.
5 Art. 5190.6, Sec. 4D(m) (part), as added Acts 76th Leg., R.S., Ch.
6 1537, Sec. 4E(k) (part).)

7 [Sections 507.154-507.200 reserved for expansion]

8 SUBCHAPTER E. TAXES

9 Sec. 507.201. EXEMPTION FROM CERTAIN TAXES. (a) The
10 property, income, and operations of a spaceport development
11 corporation are exempt from taxes imposed by this state or a
12 political subdivision of this state.

13 (b) Tangible personal property located in the spaceport,
14 such as a spacecraft or other property necessary to launch the
15 spacecraft, is exempt from ad valorem taxation.

16 (c) Chapter 151, Tax Code, does not apply to tangible
17 personal property purchased by a person for use in a spaceport.
18 (V.A.C.S. Art. 5190.6, Sec. 4D(1) (part), as added Acts 76th Leg.,
19 R.S., Ch. 1537, Sec. 4E(j) (part).)

20 Sec. 507.202. PAYMENT IN LIEU OF AD VALOREM TAXES. In lieu
21 of taxes, a spaceport development corporation shall pay to each
22 political subdivision of this state in which land owned by the
23 corporation is located an amount equal to the amount of ad valorem
24 taxes that would be imposed on that land if the land were privately
25 owned. (V.A.C.S. Art. 5190.6, Sec. 4D(1) (part), as added Acts 76th
26 Leg., R.S., Ch. 1537, Sec. 4E(j) (part).)

27 SECTION 3.02. CONFORMING AMENDMENT. Section 403.030(a),

1 Government Code, is amended to read as follows:

2 (a) For purposes of evaluating the effect on economic
3 development in this state, the comptroller, before each regular
4 session of the legislature, shall collect and make available
5 information that:

6 (1) lists the strategies in the General Appropriations
7 Act identified as meeting the statewide priority goal or service
8 category of economic development, if any, of each state agency and
9 institution of higher education, as defined by Section 61.003,
10 Education Code, including:

11 (A) legislative appropriations or actual
12 expenditures, as applicable, for each strategy;

13 (B) the method of financing of each strategy; and

14 (C) outcome measures associated with each
15 appropriate strategy that are listed in the General Appropriations
16 Act or the Automated Budget and Evaluation System of Texas (ABEST);

17 (2) lists all investments financed with money from the
18 Texas growth fund created by Section 70, Article XVI, Texas
19 Constitution;

20 (3) contains a summary of the information reported
21 under Subchapter D, Chapter 502, Local Government Code [~~Section 4C,~~
22 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
23 ~~Civil Statutes)~~], by each corporation created under Chapter 504
24 [~~Section 4A~~] or 505, Local Government Code, [~~4B of that Act~~] and a
25 copy of the report submitted by each of the 10 corporations with the
26 largest total revenue in the most recent fiscal year ending before
27 the date the information compiled under this section is made

1 available;

2 (4) contains a summary of the report required by
3 Section 403.014 and information on the effect on revenues of
4 allocation or apportionment under Sections 171.106 and 171.1061,
5 Tax Code;

6 (5) contains a summary of reports the comptroller is
7 required to submit by other law to evaluate the effectiveness of Tax
8 Code provisions, including reports required by Sections 171.707,
9 171.727, 171.759, and 171.809, Tax Code; and

10 (6) to the extent practicable, contains information on
11 employment, capital investment, and personal income relating to:

12 (A) at least two tax provisions described by
13 Section 403.014; and

14 (B) changes in school district property tax law
15 or Tax Code provisions enacted by the most recent legislature.

16 SECTION 3.03. CONFORMING AMENDMENT. Section
17 481.0069(a)(2), Government Code, is amended to read as follows:

18 (2) "Spaceport" has the meaning assigned by Section
19 507.001, Local Government Code [4D(a), Development Corporation Act
20 of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as added
21 by Chapter 1537, Acts of the 76th Legislature, Regular Session,
22 1999].

23 SECTION 3.04. CONFORMING AMENDMENT. Section 481.0069(d),
24 Government Code, is amended to read as follows:

25 (d) Money in the spaceport trust fund may not be spent
26 unless the office certifies to the comptroller that:

27 (1) a viable business entity has been established

1 that:

2 (A) has a business plan that demonstrates that
3 the entity has available the financial, managerial, and technical
4 expertise and capability necessary to launch and land a reusable
5 launch vehicle; and

6 (B) has committed to locating its facilities at a
7 spaceport in this state;

8 (2) a development corporation for spaceport
9 facilities created under Chapter 507, Local Government Code
10 [~~Section 4D, Development Corporation Act of 1979 (Article 5190.6,~~
11 ~~Vernon's Texas Civil Statutes), as added by Chapter 1537, Acts of~~
12 ~~the 76th Legislature, Regular Session, 1999]~~, has established a
13 development plan for the spaceport project and has secured at least
14 90 percent of the funding required for the project; and

15 (3) the spaceport or launch operator has obtained the
16 appropriate Federal Aviation Administration license.

17 SECTION 3.05. CONFORMING AMENDMENT. Section 481.023(a),
18 Government Code, is amended to read as follows:

19 (a) The office shall perform the administrative duties
20 prescribed under:

21 (1) Chapter 1433; and

22 (2) the Development Corporation Act (Subtitle C1,
23 Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's~~
24 ~~Texas Civil Statutes)]].~~

25 SECTION 3.06. CONFORMING AMENDMENT. Section 481.072,
26 Government Code, is amended to read as follows:

27 Sec. 481.072. DEFINITIONS. In this subchapter:

1 (1) "Cost" has the meaning assigned that term by
2 Subtitle C1, Title 12, Local Government Code [~~the Development~~
3 ~~Corporation Act~~].

4 (2) [~~"Development Corporation Act" means the~~
5 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
6 ~~Civil Statutes)~~.

7 [~~(3)~~] "Project" has the meaning assigned that term by
8 Subtitle C1, Title 12, Local Government Code [~~the Development~~
9 ~~Corporation Act~~].

10 (3) [~~(4)~~] "User" includes any person.

11 SECTION 3.07. CONFORMING AMENDMENT. Section 481.502(a),
12 Government Code, is amended to read as follows:

13 (a) The office, in coordination with the Texas Strategic
14 Military Planning Commission, shall assist defense communities in
15 obtaining financing for economic development projects that seek to
16 address future realignment or closure of a defense base that is in,
17 adjacent to, or near the defense community. The office and the
18 commission shall refer the defense community to:

19 (1) a local economic development corporation created
20 under the Development Corporation Act (Subtitle C1, Title 12, Local
21 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
22 ~~Statutes)~~] for possible financing; or

23 (2) an appropriate state agency that has an existing
24 program to provide financing for the project, including:

25 (A) the Texas Water Development Board; or

26 (B) the Texas Department of Transportation.

27 SECTION 3.08. CONFORMING AMENDMENT. Section 489.106,

1 Government Code, is amended to read as follows:

2 Sec. 489.106. ADMINISTRATION OF FUND AND CHAPTER. The
3 office shall administer the fund. In administering the fund and
4 this chapter, the office has the powers necessary to carry out the
5 purposes of this chapter, including the power to:

6 (1) make, execute, and deliver contracts,
7 conveyances, and other instruments;

8 (2) impose and collect fees and charges in connection
9 with any transaction and provide for reasonable penalties for
10 delinquent payments or performance; and

11 (3) issue bonds for economic development projects as
12 that term is defined by Section 501.101, Local Government Code,
13 [~~2(11)(A)~~] or Section 505.151, 505.152, 505.153, 505.154, 505.155,
14 or 505.156, Local Government Code [~~4B(a)(2), Development~~
15 ~~Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil~~
16 ~~Statutes)]].~~

17 SECTION 3.09. CONFORMING AMENDMENT. Section 489.108,
18 Government Code, is amended to read as follows:

19 Sec. 489.108. PROGRAMS, SERVICES, AND FUNDS UNDER BANK'S
20 DIRECTION. Notwithstanding any other law, the bank shall perform
21 the duties and functions of the office with respect to the following
22 programs, services, and funds:

23 (1) the Texas Small Business Industrial Development
24 Corporation established under Chapter 503, Local Government Code
25 [~~Section 4, Development Corporation Act of 1979 (Article 5190.6,~~
26 ~~Vernon's Texas Civil Statutes)]];~~

27 (2) the capital access program established under

1 Section 481.405;

2 (3) the Texas leverage fund;

3 (4) the linked deposit program established under
4 Section 481.193;

5 (5) the enterprise zone program established under
6 Chapter 2303;

7 (6) the industrial revenue bond program;

8 (7) the defense economic readjustment zone program
9 established under Chapter 2310;

10 (8) the Empowerment Zone and Enterprise Community
11 grant program established under Section 481.025; and

12 (9) the renewal community program.

13 SECTION 3.10. CONFORMING AMENDMENT. Sections 551.056(b)
14 and (c), Government Code, are amended to read as follows:

15 (b) In addition to the other place at which notice is
16 required to be posted by this subchapter, the following
17 governmental bodies and economic development corporations must
18 also concurrently post notice of a meeting on the Internet website
19 of the governmental body or economic development corporation:

20 (1) a municipality;

21 (2) a county;

22 (3) a school district;

23 (4) the governing body of a junior college or junior
24 college district, including a college or district that has changed
25 its name in accordance with Chapter 130, Education Code; and

26 (5) a development corporation organized under the
27 Development Corporation Act (Subtitle C1, Title 12, Local

1 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
2 ~~Statutes)~~].

3 (c) The following governmental bodies and economic
4 development corporations must also concurrently post the agenda for
5 the meeting on the Internet website of the governmental body or
6 economic development corporation:

7 (1) a municipality with a population of 48,000 or
8 more;

9 (2) a county with a population of 65,000 or more;

10 (3) a school district that contains all or part of the
11 area within the corporate boundaries of a municipality with a
12 population of 48,000 or more;

13 (4) the governing body of a junior college district,
14 including a district that has changed its name in accordance with
15 Chapter 130, Education Code, that contains all or part of the area
16 within the corporate boundaries of a municipality with a population
17 of 48,000 or more; and

18 (5) a development corporation organized under the
19 Development Corporation Act (Subtitle C1, Title 12, Local
20 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
21 ~~Statutes)~~] that was created by or for:

22 (A) a municipality with a population of 48,000 or
23 more; or

24 (B) a county or district that contains all or
25 part of the area within the corporate boundaries of a municipality
26 with a population of 48,000 or more.

27 SECTION 3.11. CONFORMING AMENDMENT. Section 2301.091(c),

1 Government Code, is amended to read as follows:

2 (c) To accomplish the purposes of this chapter, an authority
3 has the powers granted to industrial development corporations by
4 Sections 501.054, 501.059, 501.060, 501.064(a), 501.067, 501.074,
5 501.153(a), 501.154, 501.155, 501.159, 501.201(a), 501.210(b),
6 501.214, and 501.402, Local Government Code [Section 23], except
7 the limitations provided by Section 501.064(c), Local Government
8 Code [Subsection (a)(11) of that section], and Sections 501.153(b),
9 501.208(a), (c), and (e), 501.209, 501.210, and 501.213, Local
10 Government Code [25(e), 26, 27, and 29, Development Corporation Act
11 of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)], but is
12 otherwise governed by this chapter.

13 SECTION 3.12. CONFORMING AMENDMENT. Section 2303.509,
14 Government Code, is amended to read as follows:

15 Sec. 2303.509. DEVELOPMENT BONDS. To finance a project in
16 an enterprise zone, bonds may be issued under:

- 17 (1) Chapter 1433; or
18 (2) the Development Corporation Act (Subtitle C1,
19 Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's~~
20 ~~Texas Civil Statutes)]].~~

21 SECTION 3.13. CONFORMING AMENDMENT. Sections 2303.510(a)
22 and (b), Government Code, are amended to read as follows:

23 (a) The governing body of a municipality that is the
24 governing body of an enterprise zone may create, in accordance with
25 the Development Corporation Act (Subtitle C1, Title 12, Local
26 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
27 ~~Statutes)], an industrial development corporation for use by the~~

1 enterprise zone.

2 (b) A corporation created under this section has the powers
3 and is subject to the limitations of a corporation created under the
4 Development Corporation Act (Subtitle C1, Title 12, Local
5 Government Code) [~~of 1979~~]. To the extent of a conflict between this
6 section and that subtitle [~~Act~~], that subtitle [~~Act~~] prevails.

7 SECTION 3.14. CONFORMING AMENDMENT. Section 2310.408,
8 Government Code, is amended to read as follows:

9 Sec. 2310.408. DEVELOPMENT BONDS. To finance a project in a
10 readjustment zone, bonds may be issued under:

11 (1) Chapter 1433; or

12 (2) the Development Corporation Act (Subtitle C1,
13 Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's~~
14 ~~Texas Civil Statutes)~~].

15 SECTION 3.15. CONFORMING AMENDMENT. Section 362.017,
16 Health and Safety Code, is amended to read as follows:

17 Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION. (a) A
18 public agency that has entered into a contract under Section
19 362.014 may sponsor the creation of an industrial development
20 corporation under the Development Corporation Act (Subtitle C1,
21 Title 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's~~
22 ~~Texas Civil Statutes)~~].

23 (b) The corporation may issue bonds, notes, or other
24 evidences of indebtedness under the Development Corporation Act
25 (Subtitle C1, Title 12, Local Government Code) [~~of 1979~~] to finance
26 the cost of a system under the contract regardless of whether the
27 system is located within the boundaries of the public agency.

1 SECTION 3.16. CONFORMING AMENDMENT. Section 363.118(a),
2 Health and Safety Code, is amended to read as follows:

3 (a) A public agency that enters into a contract under
4 Section 363.116 may sponsor the creation of an industrial
5 development corporation as provided by the Development Corporation
6 Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979~~
7 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~].

8 SECTION 3.17. CONFORMING AMENDMENT. Section 253.009(a),
9 Local Government Code, is amended to read as follows:

10 (a) A municipality may convey to a municipally created
11 economic development corporation, including a development
12 corporation organized under the Development Corporation Act
13 (Subtitle C1, Title 12) [~~of 1979 (Article 5190.6, Vernon's Texas~~
14 ~~Civil Statutes)~~], real property that has been conveyed by gift to
15 the municipality or conveyed to the municipality as part of a legal
16 settlement and that is adjacent to an area designated for
17 development by the corporation.

18 SECTION 3.18. CONFORMING AMENDMENT. Section 283.053(d),
19 Local Government Code, is amended to read as follows:

20 (d) The base amount for a municipality that was involved in
21 litigation relating to franchise fees with one or more certificated
22 telecommunications providers during any part of 1998 and that, not
23 later than December 1, 1999, repeals any ordinance subject to
24 dispute in the litigation, voluntarily dismisses with prejudice any
25 claims in the litigation for compensation, and agrees to waive any
26 potential claim for compensation under any franchise agreement or
27 ordinance expired or in existence on September 1, 1999, is equal to,

1 at the municipality's election:

2 (1) an amount not to exceed the state average access
3 line rate on a per category basis for the certificated
4 telecommunications provider with the greatest number of access
5 lines in that municipality multiplied by the total number of access
6 lines located within the boundaries of the municipality on December
7 31, 1998, including any newly annexed areas; or

8 (2) an amount not to exceed 21 percent of the total
9 sales and use tax revenue received by the municipality pursuant to
10 Chapter 321, Tax Code. The amount does not include sales and use
11 taxes collected under:

12 (A) Chapter 451, 452, 453, or 454, Transportation
13 Code, for a mass transit authority;

14 (B) Chapter 504 or 505 [~~the Development~~
15 ~~Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil~~
16 ~~Statutes), for a 4A or 4B Development Corporation];~~

17 (C) Chapters 334 and 335, Local Government Code;
18 or

19 (D) Chapters 321, 322, and 323, Tax Code, for a
20 special district, including health service, crime control,
21 hospital, and emergency service districts.

22 SECTION 3.19. CONFORMING AMENDMENT. Section 334.003, Local
23 Government Code, is amended to read as follows:

24 Sec. 334.003. APPLICATION TO VENUE CONSTRUCTED UNDER OTHER
25 LAW. A county or municipality may use this chapter for a venue
26 project relating to a venue and related infrastructure planned,
27 acquired, established, developed, constructed, or renovated under

1 other law, including Chapter 505 of this code [~~Section 4B,~~
2 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
3 ~~Civil Statutes),~~] or Subchapter E, Chapter 451, Transportation
4 Code.

5 SECTION 3.20. CONFORMING AMENDMENT. Section 334.085(a),
6 Local Government Code, is amended to read as follows:

7 (a) In this section, "taxing authority" means:

8 (1) a rapid transit authority created under Chapter
9 451, Transportation Code;

10 (2) a regional transportation authority created under
11 Chapter 452, Transportation Code;

12 (3) a crime control district created under the Crime
13 Control and Prevention District Act (Article 2370c-4, Vernon's
14 Texas Civil Statutes); or

15 (4) a an industrial development corporation created
16 under Chapter 504 or 505 [~~Section 4A or 4B, Development Corporation~~
17 ~~Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

18 SECTION 3.21. CONFORMING AMENDMENT. Section 335.002, Local
19 Government Code, is amended to read as follows:

20 Sec. 335.002. APPLICATION TO VENUE CONSTRUCTED UNDER OTHER
21 LAW. A district may use this chapter for a venue project relating
22 to a venue and related infrastructure planned, acquired,
23 established, developed, constructed, or renovated under other law,
24 including Chapter 505 of this code [~~Section 4B, Development~~
25 ~~Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil~~
26 ~~Statutes),~~] or Subchapter E, Chapter 451, Transportation Code.

27 SECTION 3.22. CONFORMING AMENDMENT. Section 375.303(2),

1 Local Government Code, is amended to read as follows:

2 (2) "Eligible project" means a program authorized by
3 Section 379A.051 and a project as defined by Section 501.002
4 ~~[Sections 2(11)]~~ and Sections 505.151-505.156 ~~[4B(a)(2),~~
5 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
6 ~~Civil Statutes)]~~. Notwithstanding this definition, seeking a
7 charter for or operating an open-enrollment charter school
8 authorized by Subchapter D, Chapter 12, Education Code, shall not
9 be an eligible project.

10 SECTION 3.23. CONFORMING AMENDMENT. Section 377.001(3),
11 Local Government Code, is amended to read as follows:

12 (3) "Development project" means:

13 (A) a "project" as that term is defined by
14 Sections 505.151-505.158 ~~[Section 4B(a), Development Corporation~~
15 ~~Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)]~~; or

16 (B) a convention center facility or related
17 improvement such as a convention center, civic center, civic center
18 building, civic center hotel, or auditorium, including parking
19 areas or facilities that are used to park vehicles and that are
20 located at or in the vicinity of other convention center
21 facilities.

22 SECTION 3.24. CONFORMING AMENDMENT. Section 379B.002(b),
23 Local Government Code, is amended to read as follows:

24 (b) When establishing an authority, the municipality may
25 designate the authority in the municipality's resolution to be the
26 successor in interest to a nonprofit corporation organized under
27 the Development Corporation Act (Subtitle C1, Title 12) ~~[of 1979~~

1 ~~(Article 5190.6, Vernon's Texas Civil Statutes)]~~. On adoption of
2 the resolution, the corporation is dissolved and the authority
3 succeeds to all rights and liabilities of that corporation.

4 SECTION 3.25. CONFORMING AMENDMENT. Section 379B.011(b),
5 Local Government Code, is amended to read as follows:

6 (b) Section 25.07(a), Tax Code, applies to a leasehold or
7 other possessory interest in real property granted by an authority
8 for a project designated under Section 379B.009(a) in the same
9 manner as it applies to a leasehold or other possessory interest in
10 real property constituting a project described by Section 505.161
11 ~~[4B(k), Development Corporation Act of 1979 (Article 5190.6,~~
12 ~~Vernon's Texas Civil Statutes)]~~, except for the requirement in
13 Section 505.161 ~~[4B(k)]~~ that the voters of the municipality that
14 created the authority have authorized the levy of a sales and use
15 tax for the benefit of the authority.

16 SECTION 3.26. CONFORMING AMENDMENT. Section 380.002(b),
17 Local Government Code, is amended to read as follows:

18 (b) A home-rule municipality may, under a contract with a
19 development corporation created by the municipality under the
20 Development Corporation Act (Subtitle C1, Title 12) ~~[of 1979~~
21 ~~(Article 5190.6, Vernon's Texas Civil Statutes)]~~, grant public
22 money to the corporation. The development corporation shall use the
23 grant money for the development and diversification of the economy
24 of the state, elimination of unemployment or underemployment in the
25 state, and development and expansion of commerce in the state.

26 SECTION 3.27. CONFORMING AMENDMENT. Sections 383.004(4)
27 and (8), Local Government Code, are amended to read as follows:

1 (4) "Cost" has the meaning assigned by Section 501.152
2 [~~2(4), Development Corporation Act of 1979 (Article 5190.6,~~
3 ~~Vernon's Texas Civil Statutes)~~].

4 (8) "Project" has the meaning assigned by Sections
5 505.151-505.156 [~~Section 4B(a)(2), Development Corporation Act of~~
6 ~~1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

7 SECTION 3.28. CONFORMING AMENDMENT. Section 383.112, Local
8 Government Code, is amended to read as follows:

9 Sec. 383.112. EXEMPTION. Notwithstanding any other
10 provision of this chapter to the contrary, any contract between the
11 district and a governmental entity or nonprofit corporation created
12 under the Development Corporation Act (Subtitle C1, Title 12) [~~of~~
13 ~~1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~] is not
14 subject to the competitive bidding requirements of this chapter.

15 SECTION 3.29. CONFORMING AMENDMENT. Section 387.002, Local
16 Government Code, is amended to read as follows:

17 Sec. 387.002. APPLICABILITY. This chapter applies only to
18 a county that has a population of less than 45,000 if:

19 (1) any portion of the county is included in an
20 authority governed by Chapter 451 or 452, Transportation Code; or

21 (2) the county does not contain any part of a
22 municipality that, before the commissioners court of the county
23 calls an election on the question of creating a district under
24 Section 387.003, has:

25 (A) created a development corporation under
26 Chapter 504 or 505 [~~Section 4A or 4B, Development Corporation Act of~~
27 ~~1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~]; or

1 (B) imposed a sales and use tax that when
2 combined with any other sales and use tax applicable in the
3 municipality, exceeds two percent.

4 SECTION 3.30. CONFORMING AMENDMENT. Section 3801.101,
5 Special District Local Laws Code, is amended to read as follows:

6 Sec. 3801.101. DISTRICT POWERS. The district has:

7 (1) all powers necessary to accomplish the purposes
8 for which the district was created;

9 (2) the rights, powers, privileges, authority, and
10 functions of a district created under Chapter 375, Local Government
11 Code;

12 (3) the powers given to a corporation under Chapter
13 505, Local Government Code [~~Section 4B, the Development Corporation~~
14 ~~Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and
15 the power to own, operate, acquire, construct, lease, improve, and
16 maintain projects, other than a domed football stadium, described
17 by that chapter [~~section~~]; and

18 (4) the powers of a housing finance corporation
19 created under Chapter 394, Local Government Code, to provide
20 housing or residential development projects in the district.

21 SECTION 3.31. CONFORMING AMENDMENT. Section 3802.101,
22 Special District Local Laws Code, is amended to read as follows:

23 Sec. 3802.101. DISTRICT POWERS. The district has:

24 (1) all powers necessary to accomplish the purposes
25 for which the district was created;

26 (2) the rights, powers, privileges, authority, and
27 functions of a district created under Chapter 375, Local Government

1 Code; and

2 (3) the powers given to a corporation under Chapter
3 505, Local Government Code [~~Section 4B, Development Corporation Act~~
4 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the
5 power to own, operate, acquire, construct, lease, improve, and
6 maintain projects described by that chapter [~~section~~].

7 SECTION 3.32. CONFORMING AMENDMENT. Section 3803.101,
8 Special District Local Laws Code, is amended to read as follows:

9 Sec. 3803.101. DISTRICT POWERS. The district has:

10 (1) all powers necessary to accomplish the purposes
11 for which the district was created;

12 (2) the rights, powers, privileges, and authority of a
13 district created under Chapter 375, Local Government Code;

14 (3) the powers given to a corporation created under
15 the Development Corporation Act (Subtitle C1, Title 12, Local
16 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
17 ~~Statutes)~~], including:

18 (A) the power to own, operate, acquire,
19 construct, lease, improve, and maintain the projects described by
20 that Act and this chapter and any other authorized project; and

21 (B) the power to acquire land and other property
22 in accordance with Chapter 505, Local Government Code [~~Section 4B,~~
23 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
24 ~~Civil Statutes)~~]; and

25 (4) the power to create, tax, assess, and hold
26 elections in a defined area under Chapter 54, Water Code, to provide
27 improvements or services in the defined area for any project or

1 activity the district is authorized to acquire, construct, improve,
2 or provide.

3 SECTION 3.33. CONFORMING AMENDMENT. Section 3804.101,
4 Special District Local Laws Code, is amended to read as follows:

5 Sec. 3804.101. DISTRICT POWERS. The district has:

6 (1) all powers necessary to accomplish the purposes
7 for which the district was created;

8 (2) the rights, powers, privileges, authority, and
9 functions of a district created under Chapter 375, Local Government
10 Code; and

11 (3) the powers given to a corporation under Chapter
12 505, Local Government Code [~~Section 4B, Development Corporation Act~~
13 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the
14 power to own, operate, acquire, construct, lease, improve, and
15 maintain projects.

16 SECTION 3.34. CONFORMING AMENDMENT. Section 3805.101,
17 Special District Local Laws Code, is amended to read as follows:

18 Sec. 3805.101. DISTRICT POWERS. The district has:

19 (1) all powers necessary to accomplish the purposes
20 for which the district was created;

21 (2) the rights, powers, privileges, authority, and
22 functions of a district created under Chapter 375, Local Government
23 Code;

24 (3) the powers, duties, and contracting authority
25 specified by Subchapters H and I, Chapter 49, Water Code;

26 (4) the powers given to a corporation under Chapter
27 505, Local Government Code [~~Section 4B, Development Corporation~~

1 ~~Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)],~~
2 including the power to own, operate, acquire, construct, lease,
3 improve, and maintain the projects described by that chapter
4 ~~[section]~~; and

5 (5) the powers of a housing finance corporation
6 created under Chapter 394, Local Government Code.

7 SECTION 3.35. CONFORMING AMENDMENT. Section 3806.101,
8 Special District Local Laws Code, is amended to read as follows:

9 Sec. 3806.101. DISTRICT POWERS. The district has:

10 (1) all powers necessary to accomplish the purposes
11 for which the district was created;

12 (2) the rights, powers, privileges, authority, and
13 functions of a district created under Chapter 375, Local Government
14 Code; and

15 (3) the powers given to a corporation under Chapter
16 505, Local Government Code [~~Section 4B, Development Corporation Act~~
17 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)],~~ and the
18 power to own, operate, acquire, construct, lease, improve, and
19 maintain projects.

20 SECTION 3.36. CONFORMING AMENDMENT. Section 3807.101,
21 Special District Local Laws Code, is amended to read as follows:

22 Sec. 3807.101. POWERS. The district has:

23 (1) all powers necessary to accomplish the purposes
24 for which the district was created; and

25 (2) the powers given to a corporation under Chapter
26 505, Local Government Code [~~Section 4B, Development Corporation Act~~
27 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)],~~ and the

1 power to own, operate, acquire, construct, lease, improve, and
2 maintain projects.

3 SECTION 3.37. CONFORMING AMENDMENT. Section 3808.101,
4 Special District Local Laws Code, is amended to read as follows:

5 Sec. 3808.101. DISTRICT POWERS. The district has:

6 (1) all powers necessary to accomplish the purposes
7 for which the district was created;

8 (2) the powers given to a corporation under Chapter
9 505, Local Government Code [~~Section 4B, Development Corporation Act~~
10 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the
11 power to own, operate, acquire, construct, lease, improve, and
12 maintain projects; and

13 (3) the powers given to a housing finance corporation
14 created under Chapter 394, Local Government Code, to provide
15 housing or residential development projects in the district.

16 SECTION 3.38. CONFORMING AMENDMENT. Section 3809.101,
17 Special District Local Laws Code, is amended to read as follows:

18 Sec. 3809.101. DISTRICT POWERS. The district may exercise
19 the powers given to:

20 (1) a corporation created under Chapter 505, Local
21 Government Code [~~Section 4B, Development Corporation Act of 1979~~
22 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~]; and

23 (2) a housing finance corporation created under
24 Chapter 394, Local Government Code, to provide housing or
25 residential development projects in the district.

26 SECTION 3.39. CONFORMING AMENDMENT. Section 3810.101(a),
27 Special District Local Laws Code, is amended to read as follows:

1 (a) The district may exercise the powers given to:

2 (1) a corporation created under Chapter 505, Local
3 Government Code, [~~Section 4B, Development Corporation Act of 1979~~
4 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~];

5 (2) a housing finance corporation created under
6 Chapter 394, Local Government Code, to provide housing or
7 residential development projects in the district; and

8 (3) an eligible political subdivision under Chapter
9 221, Natural Resources Code.

10 SECTION 3.40. CONFORMING AMENDMENT. Section 3811.101,
11 Special District Local Laws Code, is amended to read as follows:

12 Sec. 3811.101. DISTRICT POWERS. The district has:

13 (1) all powers necessary to accomplish the purposes
14 for which the district was created;

15 (2) the powers given to a corporation under Chapter
16 505, Local Government Code [~~Section 4B, Development Corporation Act~~
17 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the
18 power to own, operate, acquire, construct, lease, improve, and
19 maintain projects; and

20 (3) the powers given to a housing finance corporation
21 created under Chapter 394, Local Government Code, to provide
22 housing or residential development projects in the district.

23 SECTION 3.41. CONFORMING AMENDMENT. Section 3812.101,
24 Special District Local Laws Code, is amended to read as follows:

25 Sec. 3812.101. DISTRICT POWERS. The district has:

26 (1) all powers necessary to accomplish the purposes
27 for which the district was created; and

1 (2) the powers given to a corporation under Chapter
2 505, Local Government Code [~~Section 4B, Development Corporation Act~~
3 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and the
4 power to own, operate, acquire, construct, lease, improve, and
5 maintain projects.

6 SECTION 3.42. CONFORMING AMENDMENT. Section 3813.101,
7 Special District Local Laws Code, is amended to read as follows:

8 Sec. 3813.101. DISTRICT POWERS. The district has:

9 (1) all powers necessary to accomplish the purposes
10 for which the district was created;

11 (2) the powers and duties of a municipal management
12 district under Subchapter E, Chapter 375, Local Government Code;
13 and

14 (3) the powers given to a [~~an industrial development~~]
15 corporation organized under the Development Corporation Act
16 (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article~~
17 ~~5190.6, Vernon's Texas Civil Statutes)~~].

18 SECTION 3.43. CONFORMING AMENDMENT. Section 3814.101,
19 Special District Local Laws Code, is amended to read as follows:

20 Sec. 3814.101. ADDITIONAL POWERS OF DISTRICT. The district
21 may exercise the powers given to:

22 (1) a corporation created under Chapter 505, Local
23 Government Code [~~Section 4B, Development Corporation Act of 1979~~
24 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~], including the
25 power to own, operate, acquire, construct, lease, improve, or
26 maintain a project described by that chapter [~~section~~]; and

27 (2) a housing finance corporation created under

1 Chapter 394, Local Government Code, to provide housing or
2 residential development projects in the district.

3 SECTION 3.44. CONFORMING AMENDMENT. Section 3815.101,
4 Special District Local Laws Code, is amended to read as follows:

5 Sec. 3815.101. DISTRICT POWERS. The district has:

6 (1) all powers necessary to accomplish the purposes
7 for which the district was created;

8 (2) the powers given to a corporation under Chapter
9 505, Local Government Code [~~Section 4B, the Development Corporation~~
10 ~~Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], and
11 the power to own, operate, acquire, construct, lease, improve, and
12 maintain projects; and

13 (3) the powers given to a housing finance corporation
14 created under Chapter 394, Local Government Code, to provide
15 housing or residential development projects in the district.

16 SECTION 3.45. CONFORMING AMENDMENT. Section 3816.101(b),
17 Special District Local Laws Code, is amended to read as follows:

18 (b) The district may exercise the powers given to:

19 (1) a corporation created under Chapter 505, Local
20 Government Code [~~Section 4B, Development Corporation Act of 1979~~
21 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~]; or

22 (2) a housing finance corporation created under
23 Chapter 394, Local Government Code, to provide housing or
24 residential development projects in the district.

25 SECTION 3.46. CONFORMING AMENDMENT. Section 3817.101,
26 Special District Local Laws Code, is amended to read as follows:

27 Sec. 3817.101. EXERCISE OF POWERS OF DEVELOPMENT

1 CORPORATION. The district may exercise the powers of a corporation
2 created under Chapter 505, Local Government Code [~~Section 4B,~~
3 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
4 ~~Civil Statutes)~~].

5 SECTION 3.47. CONFORMING AMENDMENT. Section 3819.101,
6 Special District Local Laws Code, is amended to read as follows:

7 Sec. 3819.101. ADDITIONAL POWERS OF DISTRICT. The district
8 may exercise the powers given to:

9 (1) a corporation under Chapter 505, Local Government
10 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
11 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
12 own, operate, acquire, construct, lease, improve, and maintain
13 projects described by that chapter [~~section~~];

14 (2) a housing finance corporation under Chapter 394,
15 Local Government Code, to provide housing or residential
16 development projects in the district; and

17 (3) a municipality under Chapter 380, Local Government
18 Code.

19 SECTION 3.48. CONFORMING AMENDMENT. Section 3820.101,
20 Special District Local Laws Code, is amended to read as follows:

21 Sec. 3820.101. ADDITIONAL POWERS OF DISTRICT. The district
22 may exercise the powers given to:

23 (1) a corporation under Chapter 505, Local Government
24 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
25 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
26 own, operate, acquire, construct, lease, improve, and maintain
27 projects described by that chapter [~~section~~];

1 (2) a housing finance corporation under Chapter 394,
2 Local Government Code, to provide housing or residential
3 development projects in the district; and

4 (3) a municipality under Chapter 380, Local Government
5 Code.

6 SECTION 3.49. CONFORMING AMENDMENT. Section 3821.101,
7 Special District Local Laws Code, is amended to read as follows:

8 Sec. 3821.101. ADDITIONAL POWERS OF DISTRICT. The district
9 may exercise the powers given to:

10 (1) a corporation under Chapter 505, Local Government
11 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
12 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
13 own, operate, acquire, construct, lease, improve, and maintain
14 projects described by that chapter [~~section~~]; and

15 (2) a housing finance corporation under Chapter 394,
16 Local Government Code, to provide housing or residential
17 development projects in the district.

18 SECTION 3.50. CONFORMING AMENDMENT. Section 3822.101,
19 Special District Local Laws Code, is amended to read as follows:

20 Sec. 3822.101. ADDITIONAL POWERS OF DISTRICT. The district
21 may exercise the powers given to:

22 (1) a corporation under Chapter 505, Local Government
23 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
24 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
25 own, operate, acquire, construct, lease, improve, and maintain
26 projects described by that chapter [~~section~~];

27 (2) a housing finance corporation under Chapter 394,

1 Local Government Code, to provide housing or residential
2 development projects in the district; and

3 (3) a municipality under Chapter 380, Local Government
4 Code.

5 SECTION 3.51. CONFORMING AMENDMENT. Section 3823.101,
6 Special District Local Laws Code, is amended to read as follows:

7 Sec. 3823.101. ADDITIONAL POWERS OF DISTRICT. The district
8 may exercise the powers given to:

9 (1) a corporation under Chapter 505, Local Government
10 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
11 ~~5190.6, Vernon's Texas Civil Statutes)~~]; and

12 (2) a housing finance corporation under Chapter 394,
13 Local Government Code, to provide housing or residential
14 development projects in the district.

15 SECTION 3.52. CONFORMING AMENDMENT. Section 3824.101,
16 Special District Local Laws Code, is amended to read as follows:

17 Sec. 3824.101. ADDITIONAL POWERS OF DISTRICT. The district
18 may exercise the powers given to:

19 (1) a corporation under Chapter 505, Local Government
20 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
21 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
22 own, operate, acquire, construct, lease, improve, and maintain
23 projects described by that chapter [~~section~~];

24 (2) a housing finance corporation under Chapter 394,
25 Local Government Code, to provide housing or residential
26 development projects in the district;

27 (3) a municipality under Chapter 380, Local Government

1 Code;

2 (4) an entity described in Chapters 284 and 441,
3 Transportation Code; and

4 (5) a district governed by Subchapters E and M,
5 Chapter 60, Water Code, and Section 61.116, Water Code.

6 SECTION 3.53. CONFORMING AMENDMENT. Section 3828.101,
7 Special District Local Laws Code, is amended to read as follows:

8 Sec. 3828.101. GENERAL POWERS AND DUTIES. The district has
9 the powers and duties provided by:

10 (1) the general laws relating to conservation and
11 reclamation districts created under Section 59, Article XVI, Texas
12 Constitution, including Chapters 49 and 54, Water Code, except that
13 the district's bonds and other securities are not subject to the
14 jurisdiction or supervision of the commission under Chapter 49,
15 Water Code, or other law;

16 (2) the general laws relating to road districts and
17 road utility districts created under Section 52(b), Article III,
18 Texas Constitution, including Chapter 441, Transportation Code;

19 (3) Chapter 372, Local Government Code, in the same
20 manner as a municipality or a county;

21 (4) Chapter 375, Local Government Code; and

22 (5) Chapter 505, Local Government Code [~~Section 4B,
23 Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas
24 Civil Statutes)~~].

25 SECTION 3.54. CONFORMING AMENDMENT. Section 3829.101,
26 Special District Local Laws Code, is amended to read as follows:

27 Sec. 3829.101. ADDITIONAL POWERS OF DISTRICT. The district

1 may exercise the powers given to:

2 (1) a corporation under Chapter 505, Local Government
3 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
4 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
5 own, operate, acquire, construct, lease, improve, and maintain
6 projects described by that chapter [~~section~~];

7 (2) a housing finance corporation under Chapter 394,
8 Local Government Code, to provide housing or residential
9 development projects in the district; and

10 (3) a municipality under Chapter 380, Local Government
11 Code.

12 SECTION 3.55. CONFORMING AMENDMENT. Section 3830.101,
13 Special District Local Laws Code, is amended to read as follows:

14 Sec. 3830.101. ADDITIONAL POWERS OF DISTRICT. The district
15 may exercise the powers given to:

16 (1) a corporation under Chapter 505, Local Government
17 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
18 ~~5190.6, Vernon's Texas Civil Statutes)~~]; and

19 (2) a housing finance corporation under Chapter 394,
20 Local Government Code, to provide housing or residential
21 development projects in the district.

22 SECTION 3.56. CONFORMING AMENDMENT. Section 3831.107(b),
23 Special District Local Laws Code, is amended to read as follows:

24 (b) Section 375.221, Local Government Code, does not apply
25 to a contract between the district and:

26 (1) another governmental entity;

27 (2) a nonprofit corporation, including a scientific

1 research corporation; or

2 (3) a corporation created under the Development
3 Corporation Act (Subtitle C1, Title 12, Local Government Code) [~~of~~
4 ~~1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~].

5 SECTION 3.57. CONFORMING AMENDMENT. Section 3834.101,
6 Special District Local Laws Code, is amended to read as follows:

7 Sec. 3834.101. ADDITIONAL POWERS OF DISTRICT. The district
8 may exercise the powers given to:

9 (1) a corporation under Chapter 505, Local Government
10 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
11 ~~5190.6, Vernon's Texas Civil Statutes)~~]; and

12 (2) a housing finance corporation under Chapter 394,
13 Local Government Code, to provide housing or residential
14 development projects in the district.

15 SECTION 3.58. CONFORMING AMENDMENT. Section 3835.101,
16 Special District Local Laws Code, is amended to read as follows:

17 Sec. 3835.101. ADDITIONAL POWERS OF DISTRICT. The district
18 may exercise the powers given to:

19 (1) a corporation under Chapter 505, Local Government
20 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
21 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
22 own, operate, acquire, construct, lease, improve, or maintain a
23 project described by that chapter [~~section~~]; and

24 (2) a housing finance corporation under Chapter 394,
25 Local Government Code, to provide housing or residential
26 development projects in the district.

27 SECTION 3.59. CONFORMING AMENDMENT. Section 3835.158(a),

1 Special District Local Laws Code, is amended to read as follows:

2 (a) The district may issue by competitive bid or negotiated
3 sale bonds or other obligations payable wholly or partly from
4 taxes, assessments, impact fees, revenue, grants, or other money of
5 the district, or any combination of those sources of money, to pay
6 for any authorized purpose of the district. The sources of money may
7 include economic development money contributed by the City of
8 Richmond or Rosenberg or by an economic development corporation
9 created under the Development Corporation Act (Subtitle C1, Title
10 12, Local Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas~~
11 ~~Civil Statutes)~~].

12 SECTION 3.60. CONFORMING AMENDMENT. Section 3838.001(3),
13 Special District Local Laws Code, is amended to read as follows:

14 (3) "Economic development corporation" means a
15 corporation created under the Development Corporation Act
16 (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article~~
17 ~~5190.6, Vernon's Texas Civil Statutes)~~].

18 SECTION 3.61. CONFORMING AMENDMENT. Section 3838.101,
19 Special District Local Laws Code, is amended to read as follows:

20 Sec. 3838.101. ADDITIONAL POWERS OF DISTRICT. The district
21 may exercise the powers given to an economic development
22 corporation under Chapter 505, Local Government Code [~~Section 4B,~~
23 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
24 ~~Civil Statutes)~~], including the power to own, operate, acquire,
25 construct, lease, improve, or maintain a project described by that
26 chapter [~~section~~].

27 SECTION 3.62. CONFORMING AMENDMENT. Section 3841.101,

1 Special District Local Laws Code, is amended to read as follows:

2 Sec. 3841.101. ADDITIONAL POWERS OF DISTRICT. The district
3 may exercise the powers given to:

4 (1) an economic development corporation under Chapter
5 505, Local Government Code [~~Section 4B, Development Corporation Act~~
6 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including
7 the power to own, operate, acquire, construct, lease, improve, or
8 maintain a project described by that chapter [~~section~~]; and

9 (2) a housing finance corporation under Chapter 394,
10 Local Government Code, to provide housing or residential
11 development projects in the district.

12 SECTION 3.63. CONFORMING AMENDMENT. Section 3843.101,
13 Special District Local Laws Code, is amended to read as follows:

14 Sec. 3843.101. DISTRICT POWERS. The district has:

15 (1) all powers necessary to accomplish the purposes
16 for which the district was created;

17 (2) the rights, powers, privileges, authority, and
18 functions of a district created under Chapter 375, Local Government
19 Code;

20 (3) the powers, duties, and contracting authority
21 specified by Subchapters H and I, Chapter 49, Water Code;

22 (4) the powers given to a corporation under Chapter
23 505, Local Government Code [~~Section 4B, Development Corporation Act~~
24 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including
25 the power to own, operate, acquire, construct, lease, improve, and
26 maintain the projects described by that chapter [~~section~~]; and

27 (5) the powers of a housing finance corporation

1 created under Chapter 394, Local Government Code.

2 SECTION 3.64. CONFORMING AMENDMENT. Section 3844.101,
3 Special District Local Laws Code, is amended to read as follows:

4 Sec. 3844.101. DISTRICT POWERS. The district has:

5 (1) all powers necessary to accomplish the purposes
6 for which the district was created;

7 (2) the rights, powers, privileges, authority, and
8 functions of a district created under Chapter 375, Local Government
9 Code;

10 (3) the powers, duties, and contracting authority
11 specified by Subchapters H and I, Chapter 49, Water Code;

12 (4) the powers given to a corporation under Chapter
13 505, Local Government Code [~~Section 4B, Development Corporation Act~~
14 ~~of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)~~], including
15 the power to own, operate, acquire, construct, lease, improve, and
16 maintain the projects described by that chapter [~~section~~]; and

17 (5) the powers of a housing finance corporation
18 created under Chapter 394, Local Government Code.

19 SECTION 3.65. CONFORMING AMENDMENT. Section 3847.101,
20 Special District Local Laws Code, is amended to read as follows:

21 Sec. 3847.101. EXERCISE OF POWERS OF DEVELOPMENT
22 CORPORATION. The district may exercise the powers of a corporation
23 created under Chapter 505, Local Government Code [~~Section 4B,~~
24 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
25 ~~Civil Statutes)~~].

26 SECTION 3.66. CONFORMING AMENDMENT. Section 3850.101,
27 Special District Local Laws Code, is amended to read as follows:

1 Sec. 3850.101. EXERCISE OF POWERS OF DEVELOPMENT
2 CORPORATION. The district may exercise the powers of a corporation
3 created under Chapter 505, Local Government Code [~~Section 4B,~~
4 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
5 ~~Civil Statutes)~~], including the power to own, operate, acquire,
6 construct, lease, improve, and maintain projects described by that
7 chapter [~~section~~].

8 SECTION 3.67. CONFORMING AMENDMENT. Section 3852.101,
9 Special District Local Laws Code, is amended to read as follows:

10 Sec. 3852.101. ADDITIONAL DISTRICT POWERS. The district
11 may exercise the powers given to a corporation created under
12 Chapter 504 or 505, Local Government Code [~~Section 4A or 4B,~~
13 ~~Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas~~
14 ~~Civil Statutes)~~].

15 SECTION 3.68. CONFORMING AMENDMENT. Section 3853.101,
16 Special District Local Laws Code, is amended to read as follows:

17 Sec. 3853.101. ADDITIONAL POWERS OF DISTRICT. The district
18 may exercise the powers given to:

19 (1) a corporation under Chapter 505, Local Government
20 Code [~~Section 4B, Development Corporation Act of 1979 (Article~~
21 ~~5190.6, Vernon's Texas Civil Statutes)~~], including the power to
22 own, operate, acquire, construct, lease, improve, or maintain a
23 project described by that chapter [~~section~~]; and

24 (2) a housing finance corporation under Chapter 394,
25 Local Government Code, to provide housing or residential
26 development projects in the district.

27 SECTION 3.69. CONFORMING AMENDMENT. Section 23.55(f), Tax

1 Code, is amended to read as follows:

2 (f) The sanctions provided by Subsection (a) of this section
3 do not apply if the change of use occurs as a result of:

4 (1) a sale for right-of-way;

5 (2) a condemnation;

6 (3) a transfer of the property to the state or a
7 political subdivision of the state to be used for a public purpose;
8 or

9 (4) a transfer of the property from the state, a
10 political subdivision of the state, or a nonprofit corporation
11 created by a municipality with a population of more than one million
12 under the Development Corporation Act (Subtitle C1, Title 12, Local
13 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
14 ~~Statutes)~~] to an individual or a business entity for purposes of
15 economic development if the comptroller determines that the
16 economic development is likely to generate for deposit in the
17 general revenue fund during the next two fiscal bienniums an amount
18 of taxes and other revenues that equals or exceeds 20 times the
19 amount of additional taxes and interest that would have been
20 imposed under Subsection (a) had the sanctions provided by that
21 subsection applied to the transfer.

22 SECTION 3.70. CONFORMING AMENDMENT. Section 25.07(b), Tax
23 Code, is amended to read as follows:

24 (b) Except as provided by Subsections (b) and (c) of Section
25 11.11 of this code, a leasehold or other possessory interest in
26 exempt property may not be listed if:

27 (1) the property is permanent university fund land;

1 (2) the property is county public school fund
2 agricultural land;

3 (3) the property is a part of a public transportation
4 facility owned by an incorporated city or town and:

5 (A) is an airport passenger terminal building or
6 a building used primarily for maintenance of aircraft or other
7 aircraft services, for aircraft equipment storage, or for air
8 cargo;

9 (B) is an airport fueling system facility;

10 (C) is in a foreign-trade zone:

11 (i) that has been granted to a joint airport
12 board under Chapter 129, Acts of the 65th Legislature, Regular
13 Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

14 (ii) the area of which in the portion of the
15 zone located in the airport operated by the joint airport board does
16 not exceed 2,500 acres; and

17 (iii) that is established and operating
18 pursuant to federal law; or

19 (D)(i) is in a foreign trade zone established
20 pursuant to federal law after June 1, 1991, which operates pursuant
21 to federal law;

22 (ii) is contiguous to or has access via a
23 taxiway to an airport located in two counties, one of which has a
24 population of 500,000 or more according to the federal decennial
25 census most recently preceding the establishment of the foreign
26 trade zone; and

27 (iii) is owned, directly or through a

1 corporation organized under the Development Corporation Act
2 (Subtitle C1, Title 12, Local Government Code) [~~of 1979 (Article~~
3 ~~5190.6, Vernon's Texas Civil Statutes~~)], by the same incorporated
4 city or town which owns the airport;

5 (4) the interest is in a part of:

6 (A) a park, market, fairground, or similar public
7 facility that is owned by an incorporated city or town; or

8 (B) a convention center, visitor center, sports
9 facility with permanent seating, concert hall, arena, or stadium
10 that is owned by an incorporated city or town as such leasehold or
11 possessory interest serves a governmental, municipal, or public
12 purpose or function when the facility is open to the public,
13 regardless of whether a fee is charged for admission;

14 (5) the interest involves only the right to use the
15 property for grazing or other agricultural purposes;

16 (6) the property is owned by the Texas National
17 Research Laboratory Commission or by a corporation formed by the
18 Texas National Research Laboratory Commission under Section
19 465.008(g), Government Code, and is used or is useful in connection
20 with an eligible undertaking as defined by Section 465.021,
21 Government Code; or

22 (7) the property is:

23 (A) owned by a municipality, a public port, or a
24 navigation district created or operating under Section 59, Article
25 XVI, Texas Constitution, or under a statute enacted under Section
26 59, Article XVI, Texas Constitution; and

27 (B) used as an aid or facility incidental to or

1 useful in the operation or development of a port or waterway or in
2 aid of navigation-related commerce.

3 SECTION 3.71. CONFORMING AMENDMENT. Section 151.341(a),
4 Tax Code, is amended to read as follows:

5 (a) A taxable item sold, leased, or rented to or stored,
6 used, or consumed by a nonprofit corporation formed under the
7 Development Corporation Act (Subtitle C1, Title 12, Local
8 Government Code) [~~of 1979 (Article 5190.6, Vernon's Texas Civil~~
9 ~~Statutes)~~], is exempted from the taxes imposed by this chapter if
10 the item is for the exclusive use and benefit of the nonprofit
11 corporation.

12 SECTION 3.72. CONFORMING AMENDMENT. Section 171.074, Tax
13 Code, is amended to read as follows:

14 Sec. 171.074. EXEMPTION--DEVELOPMENT CORPORATION. A
15 nonprofit corporation organized under the Development Corporation
16 Act (Subtitle C1, Title 12, Local Government Code) [~~of 1979~~
17 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~] is exempted from
18 the franchise tax.

19 SECTION 3.73. CONFORMING AMENDMENT. Section 321.101(i),
20 Tax Code, is amended to read as follows:

21 (i) A municipality for which the adoption or increase of a
22 sales and use tax approved by the voters in an election held after
23 May 1, 1995, and before December 31, 1995, is invalid because the
24 election combined into a single proposition proposal for adopting
25 an economic development sales and use tax under Chapter 505, Local
26 Government Code [~~Section 4B, Development Corporation Act of 1979~~
27 ~~(Article 5190.6, Vernon's Texas Civil Statutes)~~], and an additional

1 sales and use tax under Subsection (b) may adopt or increase the
2 sales and use tax previously approved by the voters by ordinance or
3 resolution of the governing body of the municipality. If the
4 governing body of the municipality adopts or increases the sales
5 and use tax under this subsection, the municipal secretary shall
6 send to the comptroller by certified or registered mail a certified
7 copy of the ordinance or resolution. The tax takes effect on the
8 first day of the month following the expiration of the calendar
9 quarter occurring after the date on which the comptroller receives
10 the ordinance or resolution.

11 SECTION 3.74. CONFORMING AMENDMENT. Section 452.6025(a),
12 Transportation Code, is amended to read as follows:

13 (a) In this section, "special sales and use tax" means:

14 (1) a sales and use tax levied by a municipality under:

15 (A) Chapter 504 or 505, Local Government Code
16 [~~Section 4A or 4B, Development Corporation Act of 1979 (Article~~
17 ~~5190.6, Vernon's Texas Civil Statutes)~~];

18 (B) Section 379A.081, Local Government Code, for
19 the benefit of a municipal development corporation; or

20 (C) Section 363.055, Local Government Code, for
21 the benefit of a crime control and prevention district; or

22 (2) an additional municipal sales and use tax levied
23 by a municipality under Chapter 321, Tax Code.

24 SECTION 3.75. CONFORMING AMENDMENT. Section 152.051(c),
25 Water Code, is amended to read as follows:

26 (c) Sections 501.052, 501.053, 501.056, 501.057(b) and (c),
27 501.058, 501.062, 501.063, 501.064, except as that section applies

1 to amending a corporation's bylaws, 501.065, 501.066,
2 501.068-501.072, 501.401-501.406, and Subchapters G and H, Chapter
3 501, Local Government Code [5-20 and 33-36, Development Corporation
4 Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes)], apply
5 to a corporation created under this section, except that in those
6 sections:

7 (1) a reference to the Development Corporation [that]
8 Act (Subtitle C1, Title 12, Local Government Code) includes this
9 chapter; and

10 (2) a reference to a unit includes a river authority to
11 which this chapter applies.

12 SECTION 3.76. RENUMBERING. (a) The following changes are
13 made to Subtitle A, Title 13, Local Government Code, for
14 organizational purposes:

15 (1) Chapter 401, Local Government Code, is renumbered
16 as Chapter 551, Local Government Code, and sections in the
17 renumbered chapter, Sections 401.001, 401.002, 401.003, 401.004,
18 and 401.005, are renumbered as Sections 551.001, 551.002, 551.003,
19 551.004, and 551.005, respectively; and

20 (2) Chapter 402, Local Government Code, is renumbered
21 as Chapter 552, Local Government Code, and:

22 (A) Subchapter A in the renumbered chapter is
23 redesignated as Subchapter A, Chapter 552, Local Government Code,
24 and sections in the redesignated subchapter, Sections 402.001,
25 402.002, 402.0025, and 402.003, are renumbered as Sections 552.001,
26 552.002, 552.0025, and 552.003, respectively;

27 (B) Subchapter B in the renumbered chapter is

1 redesignated as Subchapter B, Chapter 552, Local Government Code,
2 and sections in the redesignated subchapter, Sections 402.011,
3 402.012, 402.013, 402.014, 402.015, 402.016, 402.017, 402.018,
4 402.019, 402.020, 402.0205, 402.021, 402.022, and 402.023, are
5 renumbered as Sections 552.011, 552.012, 552.013, 552.014,
6 552.015, 552.016, 552.017, 552.018, 552.019, 552.020, 552.0205,
7 552.021, 552.022, and 552.023, respectively;

8 (C) Subchapter C in the renumbered chapter is
9 redesignated as Subchapter C, Chapter 552, Local Government Code,
10 and sections in the redesignated subchapter, Sections 402.041,
11 402.042, 402.043, 402.044, 402.045, 402.0451, 402.046, 402.047,
12 402.048, 402.049, 402.050, 402.051, 402.052, 402.053, and 402.054,
13 are renumbered as Sections 552.041, 552.042, 552.043, 552.044,
14 552.045, 552.0451, 552.046, 552.047, 552.048, 552.049, 552.050,
15 552.051, 552.052, 552.053, and 552.054, respectively;

16 (D) Subchapter D in the renumbered chapter is
17 redesignated as Subchapter D, Chapter 552, Local Government Code,
18 and sections in the redesignated subchapter, Sections 402.061,
19 402.062, 402.063, 402.064, 402.065, 402.066, 402.067, 402,068,
20 402.069, 402.070, 402.071, 402.072, 402.073, 402.074, and 402.075,
21 are renumbered as Sections 552.061, 552.062, 552.063, 552.064,
22 552.065, 552.066, 552.067, 552.068, 552.069, 552.070, 552.071,
23 552.072, 552.073, 552.074, and 552.075, respectively;

24 (E) Subchapter E in the renumbered chapter is
25 redesignated as Subchapter E, Chapter 552, Local Government Code,
26 and sections in the redesignated subchapter, Sections 402.091 and
27 402.092, are renumbered as Sections 552.091 and 552.092,

1 respectively;

2 (F) Subchapter F in the renumbered chapter is
3 redesignated as Subchapter F, Chapter 552, Local Government Code,
4 and sections in the redesignated subchapter, Sections 402.101,
5 402.102, 402.103, 402.104, and 402.105, are renumbered as Sections
6 552.101, 552.102, 552.103, 552.104, and 552.105, respectively;

7 (G) Subchapter G in the renumbered chapter is
8 redesignated as Subchapter G, Chapter 552, Local Government Code,
9 and sections in the redesignated subchapter, Sections 402.121,
10 402.122, 402.123, and 402.124, are renumbered as Sections 552.121,
11 552.122, 552.123, and 552.124, respectively;

12 (H) Subchapter H in the renumbered chapter is
13 redesignated as Subchapter H, Chapter 552, Local Government Code,
14 and sections in the redesignated subchapter, Sections 402.141 and
15 402.142, are renumbered as Sections 552.141 and 552.142,
16 respectively; and

17 (I) Subchapter Z in the renumbered chapter is
18 redesignated as Subchapter Z, Chapter 552, Local Government Code,
19 and sections in the redesignated subchapter, Sections 402.901,
20 402.902, 402.903, 402.904, 402.905, 402.906, 402.907, 402.909, and
21 402.910, are renumbered as Sections 552.901, 552.902, 552.903,
22 552.904, 552.905, 552.906, 552.907, 552.909, and 552.910,
23 respectively.

24 (b) The following changes are made to Subtitle B, Title 13,
25 Local Government Code, for organizational purposes:

26 (1) Chapter 411, Local Government Code, is renumbered
27 as Chapter 561, Local Government Code, and sections in the

1 renumbered chapter, Sections 411.001, 411.002, 411.003, 411.004,
2 411.005, 411.006, 411.007, 411.008, and 411.009, are renumbered as
3 Sections 561.001, 561.002, 561.003, 561.004, 561.005, 561.006,
4 561.007, 561.008, and 561.009, respectively;

5 (2) Chapter 412, Local Government Code, is renumbered
6 as Chapter 562, Local Government Code, and:

7 (A) Subchapter A in the renumbered chapter is
8 redesignated as Subchapter A, Chapter 562, Local Government Code,
9 and sections in the redesignated subchapter, Sections 412.001,
10 412.002, 412.003, 412.004, and 412.005, are renumbered as Sections
11 562.001, 562.002, 562.003, 562.004, and 562.005, respectively; and

12 (B) Subchapter B in the renumbered chapter is
13 redesignated as Subchapter B, Chapter 562, Local Government Code,
14 and sections in the redesignated subchapter, Sections 412.011,
15 412.012, 412.013, 412,014, 412.015, and 412.016, are renumbered as
16 Sections 562.011, 562.012, 562.013, 562.014, 562.015, and 562.016,
17 respectively; and

18 (3) Chapter 413, Local Government Code, is renumbered
19 as Chapter 563, Local Government Code, and:

20 (A) Subchapter A in the renumbered chapter is
21 redesignated as Subchapter A, Chapter 563, Local Government Code,
22 and sections in the redesignated subchapter, Sections 413.001 and
23 413.002, are renumbered as Sections 563.001 and 563.002,
24 respectively;

25 (B) Subchapter B in the renumbered chapter is
26 redesignated as Subchapter B, Chapter 563, Local Government Code,
27 and sections in the redesignated subchapter, Sections 413.051,

1 413.052, 413.053, 413.054, 413.055, 413.056, 413.057, 413.058,
2 413.059, 413.060, 413.061, 413.062, 413.063, 413.064, 413.065,
3 413.066, 413.067, and 413.068, are renumbered as Sections 563.051,
4 563.052, 563.053, 563.054, 563.055, 563.056, 563.057, 563.058,
5 563.059, 563.060, 563.061, 563.062, 563.063, 563.064, 563.065,
6 563.066, 563.067, and 563.068, respectively;

7 (C) Subchapter C in the renumbered chapter is
8 redesignated as Subchapter C, Chapter 563, Local Government Code,
9 and sections in the redesignated subchapter, Sections 413.101,
10 413.102, 413.103, 413.104, 413.105, 413.106, and 413.107, are
11 renumbered as Sections 563.101, 563.102, 563.103, 563.104,
12 563.105, 563.106, and 563.107, respectively; and

13 (D) Subchapter D in the renumbered chapter is
14 redesignated as Subchapter D, Chapter 563, Local Government Code,
15 and sections in the redesignated subchapter, Sections 413.151,
16 413.152, 413.153, 413.154, and 413.155, are renumbered as Sections
17 563.151, 563.152, 563.153, 563.154, and 563.155, respectively.

18 (c) The following changes are made to Subtitle C, Title 13,
19 Local Government Code, for organizational purposes:

20 (1) Chapter 421, Local Government Code, is renumbered
21 as Chapter 571, Local Government Code, and Subchapter A in the
22 renumbered chapter is redesignated as Subchapter A, Chapter 571,
23 Local Government Code, and sections in the redesignated subchapter,
24 Sections 421.001, 421.002, 421.003, 421.004, 421.005, 421.006,
25 421.007, 421.008, 421.009, 421.010, and 421.011, are renumbered as
26 Sections 571.001, 571.002, 571.003, 571.004, 571.005, 571.006,
27 571.007, 571.008, 571.009, 571.010, and 571.011, respectively;

1 (2) Chapter 422, Local Government Code, is renumbered
2 as Chapter 572, Local Government Code, and:

3 (A) Subchapter A in the renumbered chapter is
4 redesignated as Subchapter A, Chapter 572, Local Government Code,
5 and sections in the redesignated subchapter, Sections 422.001,
6 422.002, 422.003, and 422.004, are renumbered as Sections 572.001,
7 572.002, 572.003, and 572.004, respectively;

8 (B) Subchapter B in the renumbered chapter is
9 redesignated as Subchapter B, Chapter 572, Local Government Code,
10 and sections in the redesignated subchapter, Sections 422.011,
11 422.012, 422.013, and 422.014, are renumbered as Sections 572.011,
12 572.012, 572.013, and 572.014, respectively; and

13 (C) Subchapter C in the renumbered chapter is
14 redesignated as Subchapter C, Chapter 572, Local Government Code,
15 and sections in the redesignated subchapter, Sections 422.051,
16 422.052, 422.053, 422.054, 422.055, 422.056, 422.057, 422.058,
17 422.059, 422.060, 422.061, 422.062, 422.063, and 422.064, are
18 renumbered as Sections 572.051, 572.052, 572.053, 572.054,
19 572.055, 572.056, 572.057, 572.058, 572.059, 572.060, 572.061,
20 572.062, 572.063, and 572.064, respectively;

21 (3) Chapter 423, Local Government Code, is renumbered
22 as Chapter 573, Local Government Code, and sections in the
23 renumbered chapter, Sections 423.001, 423.002, and 423.003, are
24 renumbered as Sections 573.001, 573.002, and 573.003,
25 respectively; and

26 (4) Chapter 430, Local Government Code, is renumbered
27 as Chapter 580, Local Government Code, and sections in the

1 renumbered chapter, Sections 430.001, 430.002, and 430.003, are
2 renumbered as Sections 580.001, 580.002, and 580.003,
3 respectively.

4 (d) Chapter 431, Local Government Code, is renumbered for
5 organizational purposes as Chapter 601, Local Government Code, and:

6 (1) Subchapter A in the renumbered chapter is
7 redesignated as Subchapter A, Chapter 601, Local Government Code,
8 and the section in the redesignated subchapter, Section 431.001, is
9 renumbered as Section 601.001; and

10 (2) Subchapter B in the renumbered chapter is
11 redesignated as Subchapter B, Chapter 601, Local Government Code,
12 and the sections in the redesignated subchapter, Sections 431.021,
13 431.022, 431.023, 431.024, 431.025, 431.026, 431.027, 431.028,
14 431.029, 431.030, 431.031, 431.032, 431.033, 431.034, 431.035,
15 431.036, 431.037, 431.038, 431.039, 431.040, 431.041, 431.042,
16 431.043, and 431.044, are renumbered as Sections 601.021, 601.022,
17 601.023, 601.024, 601.025, 601.026, 601.027, 601.028, 601.029,
18 601.030, 601.031, 601.032, 601.033, 601.034, 601.035, 601.036,
19 601.037, 601.038, 601.039, 601.040, 601.041, 601.042, 601.043, and
20 601.044, respectively.

21 (e) Chapter 445, Local Government Code, is renumbered for
22 organizational purposes as Chapter 615, Local Government Code, and:

23 (1) Subchapter A in the renumbered chapter is
24 redesignated as Subchapter A, Chapter 615, Local Government Code,
25 and the sections in the redesignated subchapter, Sections 445.001,
26 445.002, 445.003, and 445.004, are renumbered as Sections 615.001,
27 615.002, 615.003, and 615.004, respectively;

1 (2) Subchapter B in the renumbered chapter is
2 redesignated as Subchapter B, Chapter 615, Local Government Code,
3 and the section in the redesignated subchapter, Section 445.011, is
4 renumbered as Section 615.011;

5 (3) Subchapter C in the renumbered chapter is
6 redesignated as Subchapter C, Chapter 615, Local Government Code,
7 and the sections in the redesignated subchapter, Sections 445.021,
8 445.022, 445.023, and 445.024, are renumbered as Sections 615.021,
9 615.022, 615.023, and 615.024, respectively; and

10 (4) Subchapter D in the renumbered chapter is
11 redesignated as Subchapter D, Chapter 615, Local Government Code,
12 and the sections in the redesignated subchapter, Sections 445.101,
13 445.102, and 445.103, are renumbered as Sections 615.101, 615.102,
14 and 615.103, respectively.

15 SECTION 3.77. CONFORMING AMENDMENT. The following
16 reference changes are made to conform the provisions amended to the
17 renumbering changes made by Section 3.76 of this article:

18 (1) Section 30.00005(b), Government Code, is amended
19 to read as follows:

20 (b) The court has jurisdiction over criminal cases arising
21 under ordinances authorized by Sections 215.072, 217.042, 341.903,
22 and 551.002 [~~401.002~~], Local Government Code.

23 (2) Section 364.037(a), Health and Safety Code, is
24 amended to read as follows:

25 (a) A county or public agency that offers solid waste
26 disposal services under this subchapter may enter an agreement for
27 the collection of unpaid utility or solid waste disposal services

1 fees with:

2 (1) another county or public agency that provides
3 solid waste disposal services under this subchapter;

4 (2) a municipality that operates a utility system, as
5 defined by Section 552.001 [~~402.001~~], Local Government Code; or

6 (3) another political subdivision acting on behalf of
7 a municipality, county, or public agency to assist in the
8 collection of unpaid utility charges or solid waste disposal fees.

9 (3) Section 252.022(b), Local Government Code, is
10 amended to read as follows:

11 (b) This chapter does not apply to bonds or warrants issued
12 under Subchapter A, Chapter 571 [~~421~~].

13 (4) Section 271.045(c), Local Government Code, is
14 amended to read as follows:

15 (c) The governing body of a municipality may issue
16 certificates of obligation to pay all or part of a municipality's
17 obligations incurred by contract for interests in and rights to
18 water or sewer treatment capacity in connection with a water supply
19 and transmission project or sewer treatment or collection project
20 to be constructed in whole or in part on behalf of the municipality
21 by another governmental entity or political subdivision pursuant to
22 a written agreement expressly authorized under Section 552.014
23 [~~402.014~~] of this code or Section 791.026, Government Code.

24 (5) Subdivisions (1) and (8), Section 552.044, Local
25 Government Code, as renumbered from Section 402.044, Local
26 Government Code, by this Act, are amended to read as follows:

27 (1)(A) "Benefitted property" means an improved lot or

1 tract to which drainage service is made available under this
2 subchapter.

3 (B) "Benefitted property," in a municipality
4 with a population of more than 1.18 million which is operating a
5 drainage utility system under this chapter, means a lot or tract,
6 but does not include land appraised for agricultural use, to which
7 drainage service is made available under this subchapter and which
8 discharges into a creek, river, slough, culvert, or other channel
9 that is part of the municipality's drainage utility system.
10 Sections 552.053(c)(2) [~~402.053(c)(2)~~] and (c)(3) do not apply to a
11 municipality described in this subdivision.

12 (8) "Service area" means the municipal boundaries and
13 any other land areas outside the municipal boundaries which, as a
14 result of topography or hydraulics, contribute overland flow into
15 the watersheds served by the drainage system of a municipality;
16 provided, however, that in no event may a service area extend
17 farther than the boundaries of a municipality's current
18 extraterritorial jurisdiction, nor, except as provided by Section
19 552.0451 [~~402.0451~~], may a service area of one municipality extend
20 into the boundaries of another municipality. The service area is to
21 be established in the ordinance establishing the drainage utility.
22 Provided, that no municipality shall extend a service area outside
23 of its municipal boundaries except:

24 (A) a municipality of more than 400,000
25 population located in one or more counties of less than 600,000
26 population according to the most recent federal census;

27 (B) a municipality all or part of which is

1 located over or within the Edwards Aquifer recharge zone or the
2 Edwards Aquifer transition zone, as designated by the Texas Natural
3 Resource Conservation Commission; or

4 (C) as provided by Section 552.0451 [~~402.0451~~].

5 (6) Subsection (c), Section 552.0451, Local
6 Government Code, as renumbered from Section 402.0451, Local
7 Government Code, by this Act, is amended to read as follows:

8 (c) Charges and methods of assessment agreed to under
9 Subsection (b)(2) must comply with Section 552.047 [~~402.047~~].

10 (7) Subsection (a), Section 552.052, Local Government
11 Code, as renumbered from Section 402.052, Local Government Code, by
12 this Act, is amended to read as follows:

13 (a) If, after at least five years of substantially
14 continuous operation of a municipal drainage system, the governing
15 body of the municipality determines that the system should be
16 discontinued, that the powers under this subchapter should be
17 revoked, and that provision for municipal drainage should be made
18 by other revenues, the governing body may adopt an ordinance to that
19 effect after providing notice and a public hearing as provided by
20 Section 552.045 [~~402.045~~].

21 (8) Subsection (c), Section 552.065, Local Government
22 Code, as renumbered from Section 402.065, Local Government Code, by
23 this Act, is amended to read as follows:

24 (c) An assessment against benefitted property under this
25 section is collectable with interest, cost of collection, and
26 reasonable attorney's fees. The assessment is a first and prior
27 lien on the assessed property and the lien takes effect on the date

1 that a notice of proposed improvements is made under Section
2 552.067 [~~402.067~~]. The lien is superior to any other lien or claim
3 except a state, county, school district, or municipal property tax
4 lien. The assessment is a personal liability and charge against the
5 owners of the assessed property on the date on which the lien takes
6 effect, whether or not the owners are named in a notice, instrument,
7 certificate, or ordinance provided for under this subchapter.

8 (9) Subsection (a), Section 552.067, Local Government
9 Code, as renumbered from Section 402.067, Local Government Code, by
10 this Act, is amended to read as follows:

11 (a) If the governing body of the municipality proposes to
12 levy or assess any of the cost of improvements against the
13 benefitted property as provided by Section 552.065 [~~402.065~~], the
14 governing body may file a notice, signed on behalf of the
15 municipality by the municipal clerk, secretary, mayor, or other
16 officer performing the duties of those officers, with the county
17 clerk of the county in which the property is located. The notice
18 must substantially show that the governing body has determined by
19 order, directive, or otherwise that water or sewer system
20 improvements are necessary, identify the required improvements by
21 location or otherwise, state that a portion of the cost of the
22 improvements is to be or has been specially assessed as a lien
23 against the benefitted property, and describe that property. One
24 notice may contain any number of systems or improvements.

25 (10) Subsection (b), Section 552.071, Local
26 Government Code, as renumbered from Section 402.071, Local
27 Government Code, by this Act, is amended to read as follows:

1 (b) A person who owns or claims an interest in property
2 against which a reassessment is levied has the same right of appeal
3 provided under this subchapter for an original assessment. If the
4 person does not appeal within 15 days after the date of the hearing
5 relating to the reassessment, the provisions of Section 552.069
6 [~~402.069~~] relating to waiver, bar, estoppel, and defense apply.

7 (11) Section 552.074, Local Government Code, as
8 renumbered from Section 402.074, Local Government Code, by this
9 Act, is amended to read as follows:

10 Sec. 552.074 [~~402.074~~]. AUTHORIZED INVESTMENT. A
11 certificate of special assessment issued under this subchapter,
12 including a certificate issued under a joint proceeding under
13 Section 552.072 [~~402.072~~], is a legal and authorized investment for
14 a bank, savings bank, trust company, savings and loan association,
15 insurance company, sinking fund of a municipality, county, school
16 district, or other political subdivision of this state, and for all
17 other public funds of this state or an agency of this state.

18 (12) Section 552.075, Local Government Code, as
19 renumbered from Section 402.075, Local Government Code, by this
20 Act, is amended to read as follows:

21 Sec. 552.075 [~~402.075~~]. HOME-RULE MUNICIPALITY. A
22 home-rule municipality to which this subchapter applies may adopt
23 plans and specifications for improvements as provided by this
24 subchapter and may pay in cash to the contractor who is the
25 successful bidder that part of the cost assessed against the owner
26 and the benefitted property. The municipality may reimburse itself
27 by levying an assessment against the benefitted property and its

1 owner after notice and hearing as provided by this subchapter. The
2 municipality may reimburse itself up to the amount of the
3 enhancement in value represented by the benefits and as permitted
4 under this subchapter and may issue assignable certificates in
5 favor of the municipality for the assessment. The certificates are
6 enforceable in the manner provided by Section 552.065 [~~402.065~~].
7 The municipality may use its own forces to make the improvements if
8 the work may be performed more expeditiously and economically in
9 that manner.

10 (13) Subsection (a), Section 552.910, Local
11 Government Code, as renumbered from Section 402.910, Local
12 Government Code, by this Act, is amended to read as follows:

13 (a) A municipality that operates a utility system, as
14 defined by Section 552.001 [~~402.001~~], or provides solid waste
15 disposal services may enter an agreement for the collection of
16 unpaid utility charges or solid waste disposal services fees with:

17 (1) another municipality that operates a utility
18 system;

19 (2) a county or public agency that provides solid
20 waste disposal services; or

21 (3) another political subdivision acting on behalf of
22 a municipality, county, or public agency to assist in the
23 collection of unpaid utility charges or solid waste disposal fees.

24 (14) Section 562.015, Local Government Code, as
25 renumbered from Section 412.015, Local Government Code, by this
26 Act, is amended to read as follows:

27 Sec. 562.015 [~~412.015~~]. COUNTY WATER AND SEWER UTILITY. An

1 affected county, as defined by Section 16.341, Water Code, may own,
2 operate, or maintain a water or sewer utility in the same manner as
3 a municipality under Chapter 552 [~~402~~].

4 (15) Subsection (a), Section 562.016, Local
5 Government Code, as renumbered from Section 412.016, Local
6 Government Code, by this Act, is amended to read as follows:

7 (a) A county may acquire, own, operate, or contract for the
8 operation of, a water or sewer utility system to serve an
9 unincorporated area of the county in the same manner and under the
10 same regulations as a municipality under Chapter 552 [~~402~~]. The
11 county must comply with all provisions of Chapter 13, Water Code,
12 that apply to a municipality. However, a county with a population
13 of 2.8 million or more and any adjoining county may, with the
14 municipality's approval, serve an area within a municipality.

15 (16) Section 563.001, Local Government Code, as
16 renumbered from Section 413.001, Local Government Code, by this
17 Act, is amended to read as follows:

18 Sec. 563.001 [~~413.001~~]. APPLICABILITY OF CHAPTER. This
19 chapter applies only to a county that:

20 (1) adopts an order under Section 563.052 [~~413.052~~];
21 and

22 (2) has a population of 10,000 or less, according to
23 the most recent federal census, on the date on which the order is
24 adopted.

25 (17) Section 563.051, Local Government Code, as
26 renumbered from Section 413.051, Local Government Code, by this
27 Act, is amended to read as follows:

1 Sec. 563.051 [~~413.051~~]. DEFINITION. In this subchapter,
2 "board" means a county utility system board established under
3 Section 563.052 [~~413.052~~].

4 (18) Section 563.067, Local Government Code, as
5 renumbered from Section 413.067, Local Government Code, by this
6 Act, is amended to read as follows:

7 Sec. 563.067 [~~413.067~~]. AUTHORITY TO ISSUE REVENUE
8 OBLIGATIONS. The board by resolution may authorize the issuance of
9 obligations for one or more of the purposes described by Section
10 563.066(b) [~~413.066(b)~~] that are payable solely from the revenue of
11 one or more systems.

12 (19) Subsection (a), Section 571.006, Local
13 Government Code, as renumbered from Section 421.006, Local
14 Government Code, by this Act, is amended to read as follows:

15 (a) The commissioners court or municipal authority may
16 impose a tax to pay the debt incurred under Section 571.002
17 [~~421.002~~]. The rate of the tax in any year may not exceed 50 cents
18 on each \$100 of the taxable value of property taxable by the county
19 or municipality.

20 (20) Section 572.055, Local Government Code, as
21 renumbered from Section 422.055, Local Government Code, by this
22 Act, is amended to read as follows:

23 Sec. 572.055 [~~422.055~~]. CONTENTS OF CONCURRENT ORDINANCE. A
24 concurrent ordinance creating a public utility agency under Section
25 572.052 [~~422.052~~] or re-creating an agency under Section 572.053
26 [~~422.053~~] must, as adopted by each public entity:

27 (1) contain identical provisions;

1 (2) define the boundaries of the agency to include the
2 territory within the boundaries of each participating public entity
3 as the boundaries are changed periodically;

4 (3) designate the name of the agency; and

5 (4) designate the number, place, initial term, and
6 manner of appointment of directors in accordance with Section
7 572.057 [~~422.057~~].

8 (21) Section 86.014(a), Parks and Wildlife Code, is
9 amended to read as follows:

10 (a) The commission shall grant to any county, city, or town
11 that is authorized under Subchapter A, Chapter 571 [~~421~~], Local
12 Government Code, to build and maintain seawalls a permit for the
13 taking of marl, sand, gravel, shell, or mudshell to be used for the
14 building, extending, protecting, maintaining, or improving any
15 seawall, breakwater, levee, dike, floodway, or drainway.

16 (22) Section 3503.101(b), Special District Local Laws
17 Code, is amended to read as follows:

18 (b) The authority may exercise any power or duty necessary
19 or appropriate to carry out a project described by Section
20 3503.003(a)(3) and the purposes of this chapter, including the
21 power to:

22 (1) sue and be sued, and plead and be impleaded, in its
23 own name;

24 (2) adopt an official seal;

25 (3) adopt, enforce, and amend rules for the conduct of
26 its affairs;

27 (4) acquire, hold, own, pledge, and dispose of its

1 revenue, income, receipts, and money from any source;

2 (5) select its depository;

3 (6) acquire, own, rent, lease, accept, hold, or
4 dispose of any property, or any interest in property, including
5 rights or easements, in performing its duties and exercising its
6 powers under this chapter, by purchase, exchange, gift, assignment,
7 sale, lease, or other method;

8 (7) hold, manage, operate, or improve the property;

9 (8) sell, assign, lease, encumber, mortgage, or
10 otherwise dispose of property, or any interest in property, and
11 relinquish a property right, title, claim, lien, interest,
12 easement, or demand, however acquired;

13 (9) perform an activity authorized by Subdivision (8)
14 by public or private sale, with or without public bidding,
15 notwithstanding any other law;

16 (10) lease or rent any land and building, structure,
17 or facility from or to any person to carry out a chapter purpose;

18 (11) request and accept an appropriation, grant,
19 allocation, subsidy, guarantee, aid, service, labor, material, or
20 gift, from the federal government, the state, a public agency or
21 political subdivision, or any other source;

22 (12) operate and maintain an office and appoint and
23 determine the duties, tenure, qualifications, and compensation of
24 officers, employees, agents, professional advisors and counselors,
25 including financial consultants, accountants, attorneys,
26 architects, engineers, appraisers, and financing experts, as
27 considered necessary or advisable by the board;

1 (13) borrow money and issue bonds, payable solely from
2 all or a portion of any authority revenue, by resolution or order of
3 the board and without the necessity of an election;

4 (14) set and collect rents, rates, fees, and charges
5 regarding the property and any services provided by the authority;

6 (15) exercise the powers Chapters 373 and 380, Local
7 Government Code, grant to a municipality for the development of
8 housing and expansion of economic development and commercial
9 activity;

10 (16) exercise the powers Chapter 49, Water Code,
11 grants to a general-law district;

12 (17) exercise the powers Chapter 54, Water Code,
13 grants to a municipal utility district;

14 (18) exercise the powers Chapter 441, Transportation
15 Code, grants to a road utility district;

16 (19) exercise the powers Subchapter C, Chapter 271,
17 Local Government Code, grants to a municipality or county;

18 (20) exercise the powers Chapter 552 [~~402~~], Local
19 Government Code, grants to a municipality for the provision of
20 municipal utilities;

21 (21) contract and be contracted with, in the
22 authority's own name, another person in the performance of the
23 authority's powers or duties to carry out a project described by
24 Section 3503.003(a)(3), or to accomplish the purposes of this
25 chapter for a period of years, on the terms, and by competitive
26 bidding or by negotiated contract, all as the board considers
27 appropriate, desirable, and in the best interests of the authority

1 and the accomplishment of chapter purposes; and

2 (22) acquire, hold, own, sell, assign, lease,
3 encumber, mortgage, or otherwise dispose of any real, personal, or
4 mixed property located outside the perimeter of the property
5 described by Section 3503.004 if the other property enhances or
6 facilitates the development, redevelopment, maintenance, or
7 expansion of new and existing businesses, industry, or commercial
8 activity on the property.

9 (23) Section 8104.204(d), Special District Local Laws
10 Code, is amended to read as follows:

11 (d) Section 552.014 [~~402.014~~], Local Government Code,
12 applies to any contract between the authority and a municipality,
13 including the City of Baytown.

14 (24) Section 9501.002(a), Special District Local Laws
15 Code, is amended to read as follows:

16 (a) The commissioners court and the governing body of a
17 municipality in Matagorda County by resolution may establish a
18 seawall commission to perform the functions described by Section
19 571.002 [~~421.002~~], Local Government Code.

20 (25) Section 9501.101, Special District Local Laws
21 Code, is amended to read as follows:

22 Sec. 9501.101. COMMISSION POWERS. The commission may
23 exercise the authority granted to a county or municipality under
24 Section 571.002, 571.003, 571.004, or 571.005 or Section 571.011(a)
25 [~~421.002, 421.003, 421.004, or 421.005 or Section 421.011(a)~~] or
26 (b), Local Government Code.

27 (26) Section 9501.102, Special District Local Laws

1 Code, is amended to read as follows:

2 Sec. 9501.102. AUTHORITY TO CONTRACT. The commission may
3 enter into a contract relating to the performance of any function
4 described by Section 571.002 [~~421.002~~], Local Government Code.

5 (27) Section 227.015, Transportation Code, is amended
6 to read as follows:

7 Sec. 227.015. LOCATION OF FACILITIES. Notwithstanding any
8 other law, including Chapter 181, Utilities Code, Chapter 552
9 [~~402~~], Local Government Code, and Section 49.220, Water Code, the
10 department may:

11 (1) specify the location of any facility on the
12 Trans-Texas Corridor;

13 (2) direct the time and manner of construction of a
14 public utility facility on the Trans-Texas Corridor; and

15 (3) direct the time and manner of construction or
16 operation of any other facility on the Trans-Texas Corridor.

17 (28) Sections 227.081(a) and (e), Transportation
18 Code, are amended to read as follows:

19 (a) Notwithstanding any other law, including Chapters 161,
20 162, 163, and 181, Utilities Code, Chapter 552 [~~402~~], Local
21 Government Code, and Chapter 49, Water Code, and except as provided
22 in Subsection (e), the department may require a person, including a
23 governmental or private entity, to pay a fee as a condition of using
24 any part of the Trans-Texas Corridor.

25 (e) If a public road is replaced or eliminated by the
26 Trans-Texas Corridor and a facility used the right-of-way of that
27 road under Chapter 161, 162, 163, or 181, Utilities Code, Chapter

1 552 [~~402~~], Local Government Code, or Chapter 49, Water Code, the
2 department may not require the owner of that facility to pay a fee
3 as a condition of using a segment of the Trans-Texas Corridor for
4 the location of a replacement facility.

5 (29) Section 40.002, Utilities Code, is amended to
6 read as follows:

7 Sec. 40.002. DEFINITION. For purposes of this chapter,
8 "body vested with the power to manage and operate a municipally
9 owned utility" means a body created in accordance with Section
10 1502.070, Government Code, or Subchapter G, Chapter 552 [~~402~~],
11 Local Government Code, or by municipal charter.

12 (30) Section 164.006, Utilities Code, is amended to
13 read as follows:

14 Sec. 164.006. CONSTRUCTION WITH OTHER LAWS. To provide
15 full authority for the execution of an agreement under this
16 chapter, this chapter applies to a municipality as if this chapter
17 were originally contained in Chapter 1501 or 1502, Government Code,
18 or Chapter 552 [~~402~~], Local Government Code. This chapter prevails
19 over any charter provision or general or special law.

20 (31) Section 26.049(h), Water Code, is amended to read
21 as follows:

22 (h) When a home-rule municipality has a plan to control or
23 minimize sanitary sewer overflows, Section 552.901 [~~402.901~~],
24 Local Government Code, does not limit the power of a home-rule
25 municipality, in exercising its home-rule powers under Section 5,
26 Article XI, Texas Constitution, to maintain, repair, relocate, or
27 replace a water or sanitary sewer lateral or service line on private

1 property without making an assessment against the property or a
2 person.

3 (32) Section 67.010(d), Water Code, is amended to read
4 as follows:

5 (d) A political subdivision may contract with a corporation
6 under Section 552.014 [~~402.014~~], Local Government Code, to carry
7 out this chapter. If a corporation issues bonds secured by a
8 contract entered into under Section 552.014 [~~402.014~~], Local
9 Government Code, the corporation is considered to be acting for or
10 on behalf of that political subdivision for the purposes of Section
11 1201.002(1), Government Code. A political subdivision is
12 authorized to approve by ordinance, resolution, or order the
13 articles of incorporation and the bylaws of a corporation that is
14 created for the purpose of constructing facilities under a contract
15 as provided by Section 552.014 [~~402.014~~], Local Government Code.

16 (33) Section 221.006(c), Water Code, is amended to
17 read as follows:

18 (c) The authority may execute contracts with municipalities
19 in the state substantially in the manner prescribed by Section
20 552.020 [~~402.020~~], Local Government Code, for districts organized
21 or created under Section 59, Article XVI, Texas Constitution, and
22 may execute water supply contracts with other users of water.

23 SECTION 3.78. REPEALER. The Development Corporation Act of
24 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is repealed.

25 ARTICLE 4. LEGISLATIVE INTENT; EFFECTIVE DATE

26 SECTION 4.01. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE.

27 This Act is enacted under Section 43, Article III, Texas

H.B. No. 2278

1 Constitution. No substantive change in law is intended by this Act.

2 SECTION 4.02. EFFECTIVE DATE. This Act takes effect April

3 1, 2009.

David Newkurt

President of the Senate

Tom Caddick

Speaker of the House

I certify that H.B. No. 2278 was passed by the House on April 30, 2007, by the following vote: Yeas 132, Nays 0, 1 present, not voting.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 2278 was passed by the Senate on May 15, 2007, by the following vote: Yeas 31, Nays 0.

Daisy Spaw
Secretary of the Senate

APPROVED: 15 JUN 07

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
6 PM O'CLOCK

JUN 15 2007
Roger Winnie
Secretary of State