

Texas Historical Statutes Project

1928 COMPLETE TEXAS STATUTES



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1928

COMPLETE TEXAS STATUTES

COVERING THE
REVISED CIVIL AND CRIMINAL
STATUTES 1925

TOGETHER WITH
THE STATUTES OF A GENERAL NATURE ENACTED
SUBSEQUENT TO 1925 AT THE REGULAR
AND SPECIAL SESSIONS OF THE 38th
39th AND 40th LEGISLATURES

TABLE OF SESSION LAWS
TABLES OF CORRESPONDING ARTICLES FROM
REVISED STATUTES 1879, 1895, AND 1911
TO PRESENT COMPILATION

KANSAS CITY, MO.
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1928

THE REVISED CIVIL STATUTES OF THE STATE OF TEXAS

TITLE 1

GENERAL PROVISIONS

Art.

1. Common law.

SPECIAL LAWS

2. Special laws; notice.
3. If no newspaper is published.
4. Notice for each county.
5. Affecting persons.
6. Where applicant is a non-resident.
7. Details unnecessary.
8. Proof of publication.
9. Proof of posting.

CONSTRUCTION OF LAWS

10. General rules.
11. Grammatical errors.

MISCELLANEOUS

12. Fiscal year.
13. Reports of officers.
14. Quorum.
15. Disqualifications.
16. Oath of office.
17. Date to qualify.
18. Term of office.
19. Vacancies; ratification by Senate.
20. Vacancy filled by election.
21. Vacancy in board or commission.
22. Officers of Texas.
23. Definitions.
24. Affidavit by agent.
25. Form of oath.
26. By whom administered.
27. Seals and scrolls.
28. Legal notices.
29. Official publications.
- 29a. Political advertisements.
30. Revised Statutes cited.

Article 1. [5492] [3258] Common law.—The common law of England, so far as it is not inconsistent with the Constitution and laws of this State, shall together with such Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature.

SPECIAL LAWS

Art. 2. [5494] [3260] Special laws; notice.—Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published in some newspaper published in the county embracing the locality to be affected by said law, at least once each week for the period of thirty days prior to the introduction into the Legislature of such contemplated laws. [Const. art. 3, sec. 57; Acts 1876, p. 7; G. L. vol. 8, p. 843.]

Art. 3. [5495] [3261] If no newspaper published.—If no newspaper is published in said county, a written copy of such statement shall be posted at the court house door and in five other public places in the immediate locality to be affected thereby in said county, for thirty days, and such notice shall

accurately define the locality to be affected by said law. [Id.]

Rev. Civ. St. 1911, art. 5495, required notices to be posted on the court house door.

Art. 4. [5496] [3262] Notice for each county.—Where the locality to be affected by said law shall extend beyond the limits of any one county, such notice shall be given for each county to be affected.

Art. 5. [5497] [3263] Affecting persons.—Whenever any person intends applying for the passage of a special law which shall affect persons chiefly, and not directly affect any particular locality more than others, such persons, if residing in this State, shall make publication of notice of such intention in the county of the residence of such person in the same manner as if the said law was to affect such locality. [Const. art. 3, sec. 2.]

The gist of this article is from Const. art. 3, sec. 57.

Art. 6. [5498] [3264] Where applicant is a non-resident.—If the applicant is a non-resident of this State, said publication need only be made in a newspaper published at the Capital, in like manner as if such person resided at the seat of government. [Id.]

Art. 7. [5499] [3265] Details unnecessary.—Said notice need not contain the particular form and terms of such contemplated law, but a statement only of the general purposes and nature of the same shall be sufficient. [Id.]

Art. 8. [5500] [3266] Proof of publication.—Whenever publication in a newspaper is required by law, proof of the same shall be made by the affidavit of the publisher accompanied with a printed copy of such notice as published.

Art. 9. [5501] [3267] Proof of posting.—The posting above provided for may be shown by the return of the sheriff or constable, or by the affidavit of any credible person made on a written copy of the notice so posted, showing the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law. [As amended Acts 1927, 40th Leg., p. 42, ch. 29, § 1.]

CONSTRUCTION OF LAWS

Art. 10. [5502] [3268] General rules.—The following rules shall govern in the construction of all civil statutory enactments:

1. The ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such art or trade, with reference to such subject matter.

2. The present or past tense shall include the future.

bond against such clerk and his sureties. [Acts 1846, p. 236; G. L. vol. 2, p. 1542.]

Art. 6653. [6850] [4661] [4351] Conveyances governed by then existing law.—The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was preformed [performed].

Art. 6654. [6851] [4664] [4352] Prior records; evidence.—All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

Art. 6655. [6852] [4663] [4353] May correct imperfect certificate.—When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Art. 6656. [6853] [4664] [4354] Judgment of proof of instrument.—Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Art. 6657. [6854] [4665] [4355] Effect of judgment.—A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record with like effect as if acknowledged.

Art. 6658. [3702] Land in Archer County.—Certified copies of deeds, mortgages, trust deeds, and all other instruments in any manner affecting titles to lands in Archer County which were recorded in Jack County from August 10, 1866 to August 10, 1870, made under the hand and seal of the County Clerk of Shackelford County, shall be admitted in evidence in all suits where secondary evidence is admissible. [Acts 1897, p. 143.]

Art. 6659. [6855] [4666] [4356] Record of certain titles confirmed.—Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late Republic or the now State of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not. [Acts 1860, p. 75; G. L. vol. 4, p. 1437; P. D. 5021.]

Art. 6660. [6856] [4667] [4357] Shall be evidence, when.—All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws;

but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument, except after the ninth day of February, 1860, and in the future. [Id.]

Art. 6661. [6857] [4668] [4358] Old registration operative.—Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made. [Id.]

Art. 6662. [6858] [4669] Attachments recorded.—Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. The clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. Each county clerk shall keep a well bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner. [Acts 1889, p. 80, G. L. vol. 9, p. 1108.]

TITLE 116

ROADS, BRIDGES AND FERRIES

Chap.

1. State highways.
2. Establishment of county roads.
3. Maintenance of roads.
4. Special road tax.
5. Bridges and ferries.

CHAPTER ONE

STATE HIGHWAYS

1. STATE HIGHWAY DEPARTMENT

Art.

- 6663. Department.
- 6664. Commission.
- 6665. Organization.
- 6666. Rules.
- 6667. To aid road officials.
- 6668. Qualifications of engineers.
- 6669. Engineer.
- 6669a. Auditors, accountants and inspectors.
- 6670. State road map.
- 6671. Laboratories.
- 6672. Federal aid.
- 6673. Control of highways.
- 6674. Operating expenses.

1a. CONSTRUCTION AND MAINTENANCE OF STATE HIGHWAYS

- 6674a. Definition of terms.
- 6674b. Highway system.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art.

- 6674c. County aid.
- 6674d. Federal aid.
- 6674e. Appropriation from Highway Fund.
- 6674f. Reimbursement of Highway Fund.
- 6674g. County warrants for construction.
- 6674h. Competitive bids.
- 6674i. Opening and rejecting bids.
- 6674j. Contractor's bond.
- 6674k. Form of contract.
- 6674l. Signing contracts.
- 6674m. Partial payments.
- 6674n. Condemnation of right of way and materials.

2. REGULATION OF VEHICLES

- 6675. Registration.
- 6676. Vehicles exempt.
- 6677. Registration dates.
- 6678. Fees: passenger vehicles.
- 6679. Fees: trucks.
- 6680. Fees: trailers.
- 6681. Fees: tractors.
- 6682. Basis of power fees.
- 6683. Basis of weight fees.
- 6684. Disputed classifications.
- 6685. Transfer fees.
- 6686. Dealer's license.
- 6687. **Chauffeur's license.**
- 6688. Number plates and seals.
- 6689. Replacement license.
- 6690. License receipt.
- 6691. Apportionment of funds.
- 6692. Duty of tax collector.
- 6693. Registration supplies.
- 6694. State Highway Fund.
- 6695. Misrepresenting weight.
- 6696. Unsafe vehicle.
- 6697. Delinquent registration.
- 6698. Municipal regulation.
- 6699. County traffic officers.
- 6699a. Salaries of deputies.
- 6700. Disposition of fines.
- 6701. Width of wheels.

1. STATE HIGHWAY DEPARTMENT

Article 6663. Department.—The administrative control of the State Highway Department, hereinafter called the Department, shall be vested in the State Highway Commission, hereinafter called the Commission, and the State Highway Engineer. Said Department shall have its office at Austin where all its records shall be kept. [Acts 1917, p. 416.]

Art. 6664. Commission.—The Commission shall consist of three citizens of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. The Governor shall designate one such member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his duties. The premium on such bonds shall be paid out of the State Highway Fund. [Id.; Acts 1923, p. 325.]

Art. 6665. Organization.—The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chairman may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Highway Engineer. A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection. [Id.]

Art. 6666. Rules.—The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction. [Acts 1917, p. 416.]

Art. 6667. To aid road officials.—The Department shall collect information and compile statistics

relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court. [Id.]

Art. 6668. Qualifications of engineers.—The Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work. Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance. [Id.]

Art. 6669. Engineer.—The Commission shall elect a State Highway Engineer who shall be a competent civil engineer and graduate of some first class school of civil engineering, experienced and skilled in highway construction and maintenance, who shall hold his position until removed by the Commission. He shall first execute a bond payable to the State in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission. [Id.]

Art. 6669a. Auditors, accountants and inspectors.—The Highway Commission is hereby authorized and empowered to employ a Chief Auditor of Accounts and Expenditures, three Engineer Accountants or Inspectors, and two Equipment Inspectors, fix their compensation and pay the same out of the State Highway Fund. [Acts 1927, 40th Leg., p. 214, ch. 143, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 214, ch. 143, provides that the authority granted and employments thereunder shall expire on the taking effect of the appropriation for the Highway Department for the fiscal years 1928 and 1929.

Art. 6670. State road map.—The Highway Engineer shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways. [Acts 1917, p. 416.]

Art. 6671. Laboratories.—The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the Highway Engineer

fee shall be based upon the tire equipment and gross weight of vehicle and capacity of load, as follows:

		Fees per 100 lbs. or fraction thereof:		
		If equipped with pneumatic tires.	If equipped with solid rubber tires.	If equipped with steel tires.
Gross weight in lbs.				
Class 1	1000-6000.....	\$.30	\$.40	\$1.00
Class 2	6001-8000.....	.40	.50	1.25
Class 3	8001-10,000.....	.50	.60	1.50
Class 4	10,001-12,000....	.60	.80	2.00
Class 5	12,001-14,000....	.80	1.00	2.50
Class 6	14,001-16,000....	1.20	1.50	3.00
Class 7	16,001-20,000....	1.60	2.00	4.00
Class 8	20,001 and up...	4.00	5.00	6.00

[Id.]

Art. 6681. Fees: tractors.—The word "tractor" as used in this title shall mean any self-propelled vehicle designed or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying loads on its own structure. For each tractor used upon the highways of this State the annual license fee shall be based upon the weight of the tractor as follows:

1,000- 4,000 lbs	.....	\$ .25 per cwt.
4,001- 6,000 lbs	.....	.50 per cwt.
6,001- 8,000 lbs.	.....	.60 per cwt.
8,001-10,000 lbs.	.....	.75 per cwt.
10,001-16,000 lbs.	.....	1.00 per cwt.
16,001-20,000 lbs.	.....	2.00 per cwt.

[Id.]

Art. 6682. Basis of power fees.—For all purposes of this law, the horsepower of any motor vehicle, except electric or steam driven vehicles, shall be determined by the formula commonly known as the National Automobile Chamber of Commerce Formula, being as follows: Square the diameter of the bore of the cylinder in inches, multiply by the number of cylinders, and divide by two and one-half. The horsepower of any steam driven vehicle shall be computed by the system of horsepower rating adopted by the United States Government. For vehicles propelled by electricity the rating shall be the normal horsepower designated by the manufacturer of the electric motor or motors used therein. [Id.]

Art. 6683. Basis of weight fees.—In the computation of the fees for all passenger motor vehicles and tractors the actual weight shall be the weight of the vehicles in pounds, fully provisioned and equipped for use on the highways. For commercial motor vehicles, trailers and semi-trailers, the gross weight shall be determined by adding the actual weight of vehicles, including body, to the carrying capacity of the vehicle. The Department shall compile and furnish to the tax collectors a schedule of weights of the various makes and models of motor vehicles, trailers and semi-trailers, to be ascertained from the actual weighing of the vehicles fully provisioned with water, oil and fuel and equipped with the manufacturer's standard equipment, or from certified statements of the manufacturers of the various vehicles or vehicle bodies. No applicant shall be permitted to register any such vehicle upon a declared weight less than that shown for the vehicle to be registered in said schedule. [Id.]

Art. 6684. Disputed classifications.—The Department shall have authority in disputed cases to determine the classification in which any vehicle belongs and the amount of fee which shall be paid therefor. [Id.]

Art. 6685. Transfer fees.—When any person, other than a dealer, sells a vehicle subject to registration hereunder, he shall indorse upon his certificate of registration a written transfer of the same. The purchaser of such motor vehicle shall pay to the county tax collector of the county of his residence a transfer fee of one dollar, with his full name and address, and he shall then be regarded as the owner thereof and amenable to the provisions of this law. [Acts 1917, p. 423.]

Art. 6686. Dealer's license.—(a) Any manufacturer of or dealer in motor vehicles in this State may, instead of registering each vehicle he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number which may be attached to any motor vehicle or motorcycle which he sends temporarily upon the road. The annual fee for such dealer's registration of a general distinguishing number shall be \$15.00, and additional number plates bearing said number desired by any dealer shall be assigned and registered for a fee of \$5.00 each. A dealer within the meaning of this Article means any person, firm or corporation engaged in the business of selling automobiles who runs them upon the public highways or streets for demonstration for the purpose of sale; and this Act shall not be construed as permitting the use of a dealer's license or number plate on any vehicle owned or used by such a dealer for any other purpose than demonstration for the purpose of sale. Every dealer in making application for a dealer's license shall apply for same in writing on a form prescribed and provided by the State Highway Commission. The application shall state that the applicant is a dealer within the meaning of this Act, and if he holds a contract with an automobile manufacturer or distributor for the distribution or sale of motor vehicles or motorcycles he shall so state in the application, giving make of vehicle he handles and name of such manufacturer or distributor. The facts stated in such application shall be sworn to before an officer authorized to administer oaths. No dealer's license or number plates shall be issued until this article is complied with.

(b) Each dealer holding a dealer's license may issue temporary card-board numbers using such dealer's number thereon, which may be used by any person or dealer purchasing a vehicle from such dealer until such purchaser has time to register the same at the tax collector's office in the county of the residence of such purchaser.

(c) (Manufacturer to give notice of sale or transfer.)—Every manufacturer or dealer, upon transferring a motor vehicle, trailer or semi-trailer, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of such transfer to the department upon the official form provided by the department. Every such notice shall contain the date of such transfer, names and addresses of the transferer and transferee and such description of the vehicle as may be called for in such official form.

(d) All registration fees shall be paid in the county in which the owner lives at the time of registration of said motor vehicle. [Id.; Acts 1927, 40th Leg., p. 296, ch. 211, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 296, ch. 211, provides that it shall be cumulative of all laws on the subject and shall not repeal any laws except those conflicting therewith.

Art. 6687. Chauffeur's license.—A "chauffeur" is one whose business or occupation is operating a motor vehicle for compensation, wages or hire. Each chauffeur shall pay an annual fee of three dollars for the whole or part of any year he is so engaged. The Department shall prescribe the form of application for chauffeur's license, and shall require the same to be sworn to by the applicant, indorsed and vouched for by two reputable citizens of the place where the applicant lives or resides when making application, setting forth that they have known or been acquainted with the applicant for a period of not less than sixty days prior thereto, and that he is trustworthy, sober and competent to operate motor vehicles upon the highways of this State. No license shall be issued to an applicant unless he is over eighteen years old. He shall be issued a certificate and a metal badge with a distinguishing number, free of charge. Said badge shall at all times be prominently displayed on his clothing while engaged as a chauffeur, and shall be valid only during the term of his license. [Acts 1917, p. 475.]

Art. 6688. Number plates and seals.—A pair of license number plates, each bearing the same number,