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VERNON'S TEXAS STATUTES 1948 VOLUME 1

Revised Civil Statutes
Rules of Civil Procedure



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VERNON'S
TEXAS STATUTES
1948

Containing
All Laws of a General and Permanent Nature
to the End of the 50th Legislature,
Regular Session, 1947

With
Texas Rules of Civil Procedure

COMPLETE INDEX and TABLES

Volume 1
Revised Civil Statutes
Rules of Civil Procedure

KANSAS CITY, MO.
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VERNON'S

REVISED CIVIL STATUTES

OF THE

STATE OF TEXAS

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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shall together with such Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature.

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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.]

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.]

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.

ord 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 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.]

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force and effect. [Acts 1937, 45th Leg., p. 1352, ch. 502.]

Section 21 of the Act of 1937 repealed conflicting laws.

2. REGULATION OF VEHICLES

Art. 6675. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Art. 6675a—1. Definitions of terms.—The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

(a) "Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle, as herein defined, that is self-propelled.

(c) "Motor Cycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground.

(d) "Truck-tractor" means every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) "Farm-tractor" means every motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(f) "Road-tractor" means every motor vehicle designed or used for drawing other vehicles or loads, and not so constructed as to carry a load independently or any part of the weight of the drawn load or vehicle.

(g) "Trailer" means every vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(h) "Semi-trailer" means vehicles of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

(i) "Commercial Motor Vehicles" means any motor vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails. As amended Acts 1941, 47th Leg., p. 144, ch. 110, § 1.

(j) "Passenger Car" means any motor vehicle other than a motor cycle or a bus, as defined in this Act, designed or used primarily for the transportation of persons.

(k) "Department" means the State Highway Department or its duly authorized officers or agents.

(l) "Owner" means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

(m) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled for the use of vehicles over which the State has legislative jurisdiction under its police power.

(n) "Motor Bus" shall include every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons upon the public highways of this State for compensation (or hire) whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and/or towns or suburban additions to such cities and/or towns. As amended Acts 1947, 50th Leg., p. 1013, ch. 431, § 1.

(o) "Farm-trailer" means every "trailer" as defined in Subsection (g) herein, designed and used primarily as a farm vehicle.

(p) "Farm-semi-trailer" means every semi-trailer as defined in Subsection (h) herein, designed and used primarily as a farm vehicle.

(q) By "operated or moved temporarily upon the highways" is meant the operation or conveying between different farms, and the operation or conveyance from the owner's farm to the place where his farm produce is prepared for market or where same is actually marketed and return.

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, but shall not include any passenger car or truck. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 1; Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, § 2.]

(s) "Street or suburban bus" shall include every vehicle, except a motor bus or passenger car as defined in this Act, which is used in transporting persons for compensation (or hire) exclusively within the limits of cities and towns or suburban additions to such cities or towns. [Added Acts 1947, 50th Leg., p. 1007, ch. 425, § 1.]

Section 16 of Act 1929 repeals all conflicting laws and parts of laws and specially repeals Civ.St. Arts. 6675-6683, 6688-6693, 6697, and Pen.Code, Arts. 807, 810, 818-820, and 825, and provides that the act shall not require payment of registration fees, or the registration of tractors or graders, or other machinery owned by cities or counties or the Federal Government and used on streets, alleys or roads.

Sections 14a to 14f being penal provisions were published as Pen.Code, Art. 807a.

Section 2 of chapter 431 of Acts 1947 provided that partial invalidity should not affect the validity of the remaining portions.

Section 3 repealed conflicting laws.

Section 3 of chapter 425 of Acts 1947 provided that partial invalidity should not affect the validity of the remaining portions of the Act.

Saved From Repeal. The Uniform Act Regulating Traffic on Highways, Acts 1947, 50th Leg., p. 967, ch. 421, incorporated in Art. 6701d, provides, in section 156, that such act is not intended to repeal this article.

Art. 6675a—2. Registration.—Every owner of a motor vehicle, trailer or semi-trailer used or to be used upon the public highways of this State shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof; provided that where a public highway separates lands under the dominion or control of the owner, the operation of a motor vehicle by such owner, his agents or employees, across such highway shall not constitute a use of such motor vehicle upon a public highway of this State. Owners of farm tractors, farm trailers, farm semi-trailers, and implements of husbandry, operated or moved temporarily upon the highways shall not be required to register such farm tractors, farm trailers, farm semi-trailers, or implements of husbandry; provided, however, that such farm trailers and farm semi-trailers are operated in conformity with all provisions of the law save and except the requirements as to registration and license; and providing further, that the exemptions in this section shall not apply to any farm trailer or farm semi-trailer when the gross weight exceeds four thousand (4,000) pounds; provided, that no farm trailer or farm semi-trailer with metal tires shall be permitted to operate at a speed in excess of fifteen (15) miles per hour; and further provided, that the exemptions in this section shall not apply to any farm trailer or farm semi-trailer with steel tires of a width less than three (3) inches operating in excess of fifteen (15) miles per hour; and providing further, that the exemption in this section shall not apply to any farm trailer or farm semi-trailer when the same is used for hire; provided, however, it shall be unlawful to operate any trailer or semi-trailer at night without a rear red light or red reflectors. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 2; Acts 1930, 41st

Leg., 5th C.S., p. 151, ch. 23, § 2; Acts 1941, 47th Leg., p. 144, ch. 110, § 3.]

Section 13 of the Act of 1941 authorized each county collector to adjust registration fees collected for 1941 registration year after approval by State Highway Department, but provided that the provisions should not extend beyond the end of the 1941 registration year.

Art. 6675a—2a. [Repealed by Acts 1947, 50th Leg., p. 347, ch. 195, § 1.]

The article was Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 2a.

Art. 6675a—3. Application for registration.—Application for the registration of a vehicle required to be registered hereunder shall be made on a form furnished by the department, each such application shall be signed by the owner of the vehicle, and shall give his name and address in full, and shall contain a brief description of the vehicle to be registered. Said description, in case of a new motor vehicle, shall include: The trade name of the vehicle; the year model; the style, type of body and the weight;¹ if a passenger car, or the net carrying capacity and gross weight if a commercial motor vehicle; the motor number; the date of sale by manufacturer or dealer to the applicant. The application shall contain such other information as may be required by the department. It is expressly provided that the owner of a vehicle previously registered in any State for the preceding or current year may, in lieu of filing an application as hereinbefore directed, present the license receipt and transfer receipts, if any, issued for the registration or transfer of the vehicle for the preceding calendar year, and said receipt or receipts shall be accepted by the County Tax Collector as an application for the renewal of the registration of the vehicle, provided said receipts show that the applicant is the rightful owner thereof. Provided, however, that should an owner or a claimed owner of a motor vehicle or automobile offer to register same, but has lost or misplaced the registration receipt or transfer, then upon his furnishing satisfactory evidence to the Tax Collector by affidavit or otherwise that he is the real owner of same, then shall it become the duty of the Tax Collector to issue him license therefor. It shall be the duty of the Tax Collector to date each registration receipt issued for the vehicle the same date that application is made for registration of such vehicle. Owners of motor vehicles, trailers and semi-trailers, which are the property of, and used exclusively in the service of the United States Government, the State of Texas, or any County, City or School District thereof, shall apply annually to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or County or City or School District thereof, as the case may be. Application shall be made for the registration of a new vehicle for the unexpired portion of the year in which it is acquired before it is operated on the public highways; except that a new vehicle may be operated temporarily by a dealer under the dealer's license number or by its purchaser under a special dealer card-board number, as provided in Chapter 211,² General and Special Laws of the Regular Session of the 40th Legislature. The year for the purpose of registration of motor vehicles shall be April 1st to March 31st (both inclusive) of the next succeeding calendar year, and may be referred to as the "Motor Vehicle Registration Year," and current year where used in the Statutes relating to payment of registration fees shall mean that Motor Vehicle Registration Year. Application for the renewal of registration of a vehicle and for each chauffeur's license for any Motor Vehicle Registration Year shall be made not later than April 1st of such year. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3; Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 1; Acts 1935, 44th Leg., p. 129, ch. 51, § 1.]

¹ This semi-colon should probably be a comma, as prior to the amendment of 1935.

² Articles 6686, 6688 note, post.

Section 2 of Act 1935, repealed all laws and parts of laws in conflict with the Act.

Art. 6675a—3a. Delinquency.—The payment of the license fee prescribed herein for any vehicle shall become delinquent immediately upon the use of said vehicle on any public highway without said fee having been paid in accordance with this Act.¹ In the event the payment of any such fee has become delinquent on any such vehicle, no license or license number plates shall be issued therefor by any County Tax Collector unless the owner of said vehicle pay an additional charge equal to twenty (20%) per cent of the total amount of said prescribed fee. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3a.]

¹ Articles 6675a—1 to 6675a—14 and Pen.Code, Art. 807a.

Art. 6675a—3aa. State Highway Department to approve license plates for government vehicles.—Before the delivery of license plates to anyone engaged exclusively in the service of and operating vehicles which are property of the United States Government, or the State of Texas, or any county, city, or school district thereof, such application shall have the approval of the State Highway Department before said plates are issued to any such applicant, and if it appears that said vehicle was transferred to any such agency for the sole purpose of evading the payment of registration fees, or that the same was not made in good faith, such plates shall not be issued. If after the issuance of such, said vehicles cease to be owned or operated by such agencies, then such license may be revoked. Said plates may be recalled, and taken into possession by the State Highway Department. Said Department may provide for the issuance of specially designated plates to those exempt by law, and such plates are not to be issued annually but after having been issued are to remain on said vehicles until they cease to be owned or operated by the United States Government, the State of Texas or any county, city, or school district thereof, or until said plates become mutilated, lost, or stolen. When said vehicles cease to be owned or operated by the United States Government, the State of Texas, or any county, city, or school district thereof, said plates and registration receipts are to be forwarded to the State Highway Department for cancellation. It is further provided that the State Highway Department may provide rules and regulations for the issuance thereof, and for the enforcement thereof, and it shall be unlawful for any person to operate a vehicle if the license has been revoked, and any such person shall be liable for the penalties prescribed for the failure to register a vehicle which is being driven upon public highways. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3aa, added Acts 1931, 42nd Leg., p. 14, ch. 14, § 1; as amended Acts 1947, 50th Leg., p. 249, ch. 145, § 1.]

Section 2 of the Act of 1947 provided: "If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases be declared unconstitutional."

Section 3 repealed all conflicting laws or parts of laws.

Art. 6675a—3b. [Repealed by Acts 1937, 45th Leg., p. 1324, ch. 489, § 1.]

This article, Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3b, added by Acts 1931, 42nd Leg., p. 215, ch. 127, § 1.

Art. 6675a—3c. [Expired.]

This article, being Acts 1933, 43rd Leg., p. 7, ch. 5, relating to extension of time for payment of motor vehicle registration fees, is omitted as having accomplished its purpose and expired.