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VERNON'S TEXAS CIVIL STATUTES

CHAPTER 20. MISCELLANEOUS

Art. 9010. PEDDLING OF PRINTED MATTER BY DEAF OR MUTE PERSONS. It shall be unlawful for any person to peddle or use a finger alphabet card or other printed matter stating in effect that the person is deaf and/or mute, in a manner calculated to play upon the sympathy of another in the solicitation of a contribution or donation. Any person violating any provision hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than sixty (60) days or by a fine of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50), or by both imprisonment and fine.

Acts 1959, 56th Leg., p. 1066, ch. 487, Sec. 1.

Text of [article\[0\]](#) effective until April 1, 2009

Art. [9020\[0\]](#). REGULATION OF INVENTION DEVELOPMENT SERVICES ACT.

Short Title

Sec. 1. This Act may be cited as the Regulation of Invention Development Services Act.

Definitions

Sec. 2. In this Act:

(1) "Invention development services" means any act done by or for an invention developer for the procurement or attempted procurement by the invention developer of a licensee or buyer of an intellectual property right in an invention. The term includes the evaluation, perfecting, marketing, brokering, or promoting of an invention, a patent search, and preparation or prosecution of a patent application by a person not registered to practice before the U.S. Patent and Trademark Office.

(2) "Invention" means a discovery, process, machine, design, formulation, product, concept, or idea, or any combination of these, whether patentable or not.

Customer

Sec. 3. For the purposes of this Act, a customer is:

- (1) an individual who enters into a contract with an invention developer for invention development services; or
- (2) a firm, partnership, corporation, or other entity that enters into a contract with an invention developer for invention development services and that is not purchasing those services as an adjunct to the traditional commercial enterprises in which it engages as a business.

#### Invention Developer

Sec. 4. For the purposes of this Act, an invention developer is an individual, firm, partnership, or corporation, or an agent, employee, officer, partner, or independent contractor of one of those entities, that offers to perform or performs invention development services for a customer and that is not:

- (1) a department or agency of federal, state, or local government;
- (2) a nonprofit, charitable, scientific, or educational organization, qualified under the Texas Non-Profit Corporation Act ([Article\[0\]](#) 1396-1.01 et seq., Vernon's Texas Civil Statutes) or described by Section 170(b)(1)(a) of the Internal Revenue Code of 1954, as amended;
- (3) an attorney acting within the scope of the attorney's professional license;
- (4) a person registered before the U.S. Patent and Trademark Office acting within the scope of that person's professional license; or
- (5) a person, firm, corporation, association, or other entity that does not charge a fee, including reimbursement for expenditures made or costs incurred by the entity, for invention development services other than payment made from a portion of the income received by a customer by virtue of acts performed by the entity.

#### Contracting Requirements

Sec. 5. (a) Each contract for invention development services by which an invention developer undertakes invention development services for a customer is subject to this Act. The contract must be in writing and the invention developer shall give a copy of the contract to the customer at the time the customer signs the contract.

(b) If it is the invention developer's normal practice to seek more than one contract in connection with an invention or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall give to the customer at

the time the customer signs the first contract:

- (1) a written statement describing that practice; and
- (2) a written summary of the developer's normal terms, if any, of subsequent contracts, including the approximate amount of the developer's normal fees or other consideration, if any, that may be required from the customer.

(c) For the purposes of this section, delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer irrespective of the date or dates appearing in that instrument is payment.

(d) Notwithstanding any contractual provision to the contrary, payment for invention development services may not be required, made, or received before the fourth working day after the day on which the customer receives a copy of the contract for invention development services signed by the invention developer and the customer.

(e) Until the payment for invention development services is made, the parties to a contract for invention development services have the option to terminate the contract. The customer may exercise the option by refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer a written notice of its exercise of the option. The written notice becomes effective on its receipt by the customer.

#### Standard Provisions for Cover Notice

Sec. 6. (a) A contract for invention development services must have a conspicuous and legible cover sheet attached. The cover sheet must set forth:

- (1) the name, home address, office address, and local office address of the invention developer; and
- (2) the following notice printed in bold-faced type of not less than 10-point size:

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

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

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

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

(b) The invention developer shall complete the cover sheet with the proper information to be provided in the blanks. In the first blank the invention developer shall enter the year that the invention developer began business or the effective date of this Act. The numbers entered in the last two blanks of the cover notice may be rounded to the nearest 100 and need not include those who have contracted with the invention developer during the three calendar months immediately preceding the date of the contract. If the number to be inserted in the third blank is zero, it must be so stated.

(c) The cover notice may not contain anything in addition to the information required by Subsection (a) of this section.

#### Reports to Customer Required

Sec. 7. For each contract for invention development services, the invention developer, at least once each calendar quarter during the term of the contract, shall deliver to the customer at the address specified in the contract a written report that identifies the contract and that sets forth:

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

(2) the name and address of each person, firm, or corporation to whom the subject matter of the contract has been disclosed, the reason for each disclosure, the nature of the disclosure, and copies of all responses received as a result of those disclosures.

#### Mandatory Contract Terms

Sec. 8. (a) A contract for invention development services shall set forth in bold-faced type of not less than 10-point size:

(1) the terms and conditions of payment and contract termination rights required by Section 5 of this Act;

(2) a full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer;

(3) a statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the customer's invention;

(4) the full name and principal place of business of the invention developer;

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

(6) a statement of estimated or projected customer earnings

and a description of the data on which the estimation or projection is based if the invention developer makes an oral or written representation of estimated or projected customer earnings;

(7) the name and address of the custodian of all records and correspondence pertaining to the invention development services for which the contract is made;

(8) a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer until the second anniversary of the date of the expiration of the contract for invention development services and that on seven days' written notice the invention developer will make the invention development services records and correspondence available to the customer or the customer's representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours; and

(9) a statement setting forth a time schedule for performance of the invention development services, including an estimated date by which performance of the invention development services is expected to be completed.

(b) To the extent that the description of specific acts or services required by Subsection (a)(2) of this section gives the invention developer discretion in determining which acts or services will be performed, the invention developer is a fiduciary.

#### Remedies

Sec. 9. (a) A contract for invention development services that does not substantially comply with this Act is voidable at the option of the customer. A contract for invention development services entered into in reliance on any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer is voidable at the option of the customer. Any waiver by the customer of any provision of this Act is contrary to public policy and is void.

(b) A customer who has been injured by a violation of this Act by an invention developer, by a false or fraudulent statement, representation, or omission of material fact by an invention developer, or by failure of an invention developer to make all disclosures required by this Act may recover in a civil action against the invention developer:

(1) court costs;

(2) attorney's fees; and

(3) the amount of actual damages, if any, sustained by the customer or \$1,000, whichever is greater.

(c) Alternatively, any violation of this Act by an invention developer, or omission of material fact by an invention developer, or failure of an invention developer to make all disclosures required by this Act constitutes a deceptive trade practice under Chapter 17 of the Business & Commerce Code. Remedies available

under Subsection (b) of this section are mutually exclusive to those provided under this Subsection (c) in conformance with Section 17.43 of the Business & Commerce Code, as amended.

(d) For the purpose of this section, substantial violation of any provision of this Act by an invention developer or execution by the customer of a contract for invention development services in reliance on a false or fraudulent statement, representation, or material omission establishes a rebuttable presumption of injury.

#### Enforcement; Civil Penalty; Restraint of Violations

Sec. 10. The attorney general shall enforce this Act. The attorney general may recover a civil penalty not to exceed \$2,000 for each violation of this Act and may seek equitable relief to restrain a violation of this Act.

#### Financial Requirements

Sec. 11. (a) Except as provided by Subsection (c) of this section, each invention developer rendering or offering to render invention development services in this state shall maintain a bond issued by a surety company authorized to do business in this state. The principal sum of the bond must be at least five percent of the invention developer's gross income from the invention development business in this state during the invention developer's last fiscal year or \$25,000, whichever is greater. The invention developer shall file a copy of the bond with the secretary of state before the day on which the invention developer begins business in this state. Before the 91st day after the last day of the invention developer's fiscal year, the invention developer shall change the amount of the bond if necessary to conform with the requirements of this section.

(b) The bond required by Subsection (a) of this section must be in favor of the State of Texas for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is damaged by fraud, dishonesty, or failure to provide the services of the invention developer in performance of the contract. Any person claiming against the bond may maintain an action at law against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond required by this subsection is limited to the amount of the bond.

(c) Instead of furnishing the bond required by Subsection (a) of this section, the invention developer may deposit with the secretary of state a cash deposit equal to the amount of the bond required by this section. The cash deposit may be satisfied by:

(1) certificates of deposit payable to the secretary of state issued by banks doing business in this state and insured by the Federal Deposit Insurance Corporation;

(2) investment certificates of share accounts assigned to the secretary of state and issued by a savings and loan association

doing business in this state and insured by the Federal Savings and Loan Insurance Corporation;

(3) bearer bonds issued by the United States government or by this state; or

(4) cash deposited with the secretary of state.

#### Effect on Other Laws

Sec. 12. This Act does not annul or limit any obligation, right, or remedy that is applicable or available under the law of this state.

Acts 1981, 67th Leg., p. 260, ch. 108, eff. May 7, 1981.

Art. 9023d. DISPOSAL OF COMPUTER EQUIPMENT BY CHARITABLE ORGANIZATION. (a) In this [article\[0\]](#):

(1) "Computer equipment" includes computers, telecommunications devices and systems, automated information systems, and peripheral devices and hardware that are necessary to the efficient installation and operation of that equipment, but does not include computer software.

(2) "Charitable organization" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(b) Except as provided by Subsections (c) and (d) of this [article\[0\]](#), a charitable organization that expends funds received from the state, whether by appropriation, grant, or otherwise, to purchase computer equipment may not dispose of or discard the equipment before the fourth anniversary of the date the organization purchased the equipment.

(c) This [article\[0\]](#) does not prohibit:

(1) the sale or trade of computer equipment; or

(2) the disposal of equipment that is not operational.

(d) A charitable organization may dispose of computer equipment purchased with state funds within the four-year period after the date of purchase by donating the equipment to another charitable organization.

(e) This [article\[0\]](#) applies only to computer equipment that a charitable organization purchases for at least \$500.

(f) The comptroller shall adopt rules to implement this [article\[0\]](#).

Added by Acts 1997, 75th Leg., ch. 1087, Sec. 1, eff. Sept. 1, 1997.

Text of [article\[0\]](#) effective until April 1, 2009

Art. 9023e. TELEPHONE SOLICITATIONS BY CHARITABLE ORGANIZATIONS.

### Scope of Act

Sec. 1. The solicitation of contributions from persons in this state shall be considered to be engaging in telephone solicitation in Texas, regardless of where the solicitation originates.

### Definitions

Sec. 2. In this Act:

(1) "Charitable organization" means a person, other than a governmental law enforcement agency or organization, who solicits contributions or funds and is or holds himself, herself, or itself out to be established or operating for a charitable purpose relating to law enforcement, including nongovernmental law enforcement organizations, nongovernmental law enforcement publications, and survivors of law enforcement officers who are killed in the line of duty.

(2) "Commercial telephone solicitor" means a person who is retained by a charitable organization to solicit contributions or funds by telephone, whether done individually or through another person under the direction of the commercial telephone solicitor. The term does not include a bona fide employee, officer, director, or volunteer of a charitable organization.

(3) "Contribution" means the promise to give or the gift of money, credit, property, financial assistance, or other thing of any kind or value, except volunteer services. The term does not include bona fide fees, dues, or assessments paid by members if membership is not conferred solely as consideration for making a contribution in response to a telephone solicitation.

(4) "Knowingly" means with actual awareness, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(5) "Person" means an individual, partnership, corporation, association, or other legal entity.

(6) "Telephone solicitation" means the use of a telephone to solicit another person to make a charitable contribution to an organization.

### Register To Be Maintained

Sec. 3. (a) The attorney general shall establish and maintain a register of charitable organizations subject to this Act.

(b) All documents required to be filed with the attorney general under this Act are public information and shall be available to the public under the open records law, Chapter 552, Government Code, except those documents that identify the donors of a charitable organization, which information is confidential and is not subject to disclosure.



## Registration

Sec. 4. (a) The attorney general shall maintain a registry of charitable organizations that submit to the attorney general completed registration statements that contain:

(1) the legal name and each assumed name, the mailing address and street address, and each telephone number and facsimile number of each office, chapter, local unit, branch, and affiliate of the charitable organization;

(2) the employer identification number of the charitable organization;

(3) the name, title, address, and telephone number of each officer, director, and executive director or other chief operating officer of the charitable organization;

(4) the name of each officer, director, or employee who is compensated by the charitable organization or who has custody and control of funds of the charitable organization and who has been convicted of or pleaded nolo contendere to a misdemeanor involving fraud or the theft, misappropriation, misapplication, or misuse of property of another, or any felony, including the offense and the state, court, and date of each conviction or plea of nolo contendere;

(5) the date the charitable organization was incorporated and the state of incorporation or, if not incorporated, the type of organization and the date established; the day and month on which the organization's fiscal year ends; and whether the organization is eligible to receive tax-deductible contributions under Section 170, Internal Revenue Code of 1986 (26 U.S.C. Section 170);

(6) a statement as to whether the organization has applied for or been granted tax exempt status by the Internal Revenue Service and, if so, the date of the application, the date the exemption was granted or denied, the Internal Revenue Code section on which the application was based, and a statement as to whether or when the tax exemption has ever been denied, revoked, or modified;

(7) the date the organization began doing business in this state and the name and address of the organization's registered agent in this state;

(8) a statement of the charitable organization's charitable purposes and a list of the programs for which funds are solicited;

(9) a statement that includes:

(A) the names, addresses, and telephone numbers of the organization's accountants and auditors and the method of accounting used;

(B) a statement that the charitable organization has attempted in good faith to comply with all Texas county and municipal ordinances regarding telephone solicitation that have been filed with the attorney general or, if none apply, a statement to that effect;

(C) for charitable organizations that engage the services of

commercial telephone solicitors, the name and address of each commercial telephone solicitor engaged in the preceding 12 months, as well as written confirmation from the commercial telephone solicitor that it has complied with all state and local registration laws;

(D) the amount paid to commercial telephone solicitors during the preceding 12 months;

(E) the total contributions received during the preceding 12 months; and

(F) the total fund-raising costs during the preceding 12 months, computed pursuant to generally accepted accounting principles;

(10) a copy of the charitable organization's most recently filed Internal Revenue Service Form 990 and other federal tax returns, including all supplements, amendments, and attachments to those returns and requests for extensions to file those returns or, if the charitable organization does not file federal tax returns:

(A) a statement as to the reason none is filed; and

(B) the charitable organization's most recent financial statements, including audited financial statements, if any have been prepared; and

(11) a sworn statement verifying that the information contained in the registration statement and all attachments to the statement are true, correct, and complete to the best of the affiant's knowledge.

(b) A charitable organization shall file its initial registration statement before the 10th working day preceding the date on which the organization begins telephone solicitation in this state.

(c) Registration expires on the 15th day of the fifth month after the last day of a charitable organization's fiscal year. Renewal registration statements shall be filed on the same forms required for initial registration statements and must include the name and employer identification number of the charitable organization and any changes to the information previously submitted to the attorney general. For items on which there is no change from the previous year's registration statement, "no change" may be indicated.

(d) A filing fee not to exceed \$50 must accompany the initial registration statement. A \$50 filing fee must accompany all renewal registration statements.

(e) The registration statements shall be submitted on forms prescribed or approved by the attorney general.

(f) A volunteer that has been authorized to solicit on behalf of a charitable organization is not required to register under this Act.

#### Bond

Sec. 5. A commercial telephone solicitor shall post a surety

bond with the secretary of state in the amount of \$50,000 issued by a surety company authorized to do business in this state.

#### Notification of Noncompliance

Sec. 6. (a) A charitable organization that is not in compliance with this Act shall be notified of noncompliance by the attorney general by first class mail at the organization's last reported address. Noncompliance includes failure to file any documents required by this Act or the filing of incomplete or inaccurate documents.

(b) A charitable organization violates this Act if the organization:

(1) fails to file complete documents within 30 days after the date the notice required by Subsection (a) of this section has been mailed; or

(2) knowingly files materially inaccurate documents.

#### Recordkeeping; Audit Powers of Attorney General

Sec. 7. (a) Each charitable organization required to file a registration statement shall keep true books and records as to its activities within this state in a form to enable it to accurately provide the information required by this Act. The books and records shall be retained for a period of at least three years after the end of the period to which the registration statement relates. All books and records of a charitable organization shall be made available for inspection and copying by authorized personnel of the attorney general on written request by authorized personnel of the attorney general.

(b) A charitable organization shall make available the information requested by authorized personnel of the attorney general at the organization's principal place of business within 10 working days of the date of the request, or at a time and place as may be agreed.

(c) The authority established by this section is in addition to other statutory or common law audit or investigative authority of the attorney general.

#### Registration Does Not Imply Endorsement

Sec. 8. Registration under this Act does not imply endorsement by this state or the attorney general, and charitable organizations are prohibited from stating or implying to the contrary.

#### Remedies

Sec. 9. (a) The attorney general may institute an action for failure to fully and accurately comply with this Act and may obtain

injunctive relief to restrain a person from continuing a violation, cancellation or suspension of the registration, an order restraining the person from doing business in this state while violating this Act, a civil penalty of not more than \$25,000 per violation, or injunctive relief and a civil penalty. A person who violates an injunction issued under this section is liable to the state for a civil penalty of not less than \$100,000.

(b) The remedies authorized by this Act are not exclusive but are in addition to any other procedure or remedy provided for by other statutory or common law.

(c) In any proceeding successfully prosecuted by the attorney general under this Act, the court may allow the attorney general to recover civil penalties and the reasonable costs, expenses, and attorney's fees incurred in bringing the suit.

#### Dedication of Fees and Civil Penalties

Sec. 10. In addition to other money, all fees assessed under this Act and all recovered expenses incurred in obtaining injunctive relief and administrative and civil penalties authorized by this Act are dedicated for use by the attorney general in enforcing and administering this Act. Recovered expenses include investigative costs, witness fees, attorney's fees, and deposition expenses.

#### Venue

Sec. 11. An action under this Act shall be brought in a court of competent jurisdiction in Travis County, in the county in which the charitable organization has its principal place of business or has a fixed and established place of business at the time the suit is brought, or in the county in which solicitation occurred.

#### Notice to Contributors; Prohibition

Sec. 12. (a) If less than 90 percent of the contributions or funds collected by a charitable organization or commercial telephone solicitor are paid by the charitable organization or commercial telephone solicitor to a charitable organization, the commercial telephone solicitor shall notify each person solicited by telephone, before accepting a contribution or funds from the person, of the percentage of the contributions or funds that will be paid to the organization for which the contributions or funds are being solicited and the percentage that will be retained by the solicitor. This information shall also be included on any written statement mailed to the contributor.

(b) A charitable organization or commercial telephone solicitor may not make a telephone call to solicit contributions or funds unless the call is made after 9 a.m. and before 7 p.m., Monday through Friday.

## Prohibited Practices

Sec. 13. (a) A person may not commit an unfair or deceptive act or practice in the conduct of solicitations for a charitable organization.

(b) A person may not represent to a person solicited that a contribution is to be used to benefit the survivors of a law enforcement officer killed in the line of duty unless:

(1) 100 percent of the contributions collected are used to benefit those survivors; or

(2) the person solicited is informed in writing of the exact percentage of the contribution that will directly benefit those survivors.

## Rules

Sec. 14. The attorney general may adopt rules, procedures, and forms that are consistent with and necessary for the proper administration and enforcement of this Act.

Acts 1997, 75th Leg., ch. 1202, Sec. 1 to 14, eff. Sept. 1, 1997.

Text of [article\[0\]](#) effective until April 1, 2009

Art. 9026a. CHARGES FOR TITLE FEES, REGISTRATION FEES, AND PROPERTY TAXES. (a) A person required to register under Section 152.065, Tax Code, may include in a customer agreement a separate charge for the proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on the person's vehicle fleet.

(b) If a person includes a charge under Subsection (a) of this [article\[0\]](#) in a customer agreement, the charge:

(1) must be included on a nondiscriminatory basis; and

(2) shall be collected in each agreement other than an agreement that is exempt from a tax imposed under Section 152.026, Tax Code.

(c) A person commits an offense if the person violates this [article\[0\]](#). An offense under this subsection is a Class A misdemeanor

Acts 1997, 75th Leg., ch. 165, Sec. 30.43(c), eff. Sept. 1, 1997.

Text of [article\[0\]](#) effective until April 1, 2009

Art. 9026b. RETENTION OR USE OF CERTAIN MOTOR VEHICLES PROHIBITED. (a) An owner to whom Section 152.065, Tax Code,

applies is prohibited from retaining for use or using a motor vehicle that has been issued a certificate of title under Section 501.0923, Transportation Code, for a usual commercial purpose of that owner.

(b) A person commits an offense if the person violates Subsection (a) of this [article\[0\]](#). An offense under this subsection is a Class A misdemeanor.

(c) In this [article\[0\]](#), "certificate of title," "owner," and "motor vehicle" have the meanings assigned by Section 501.002, Transportation Code.

Acts 1997, 75th Leg., ch. 165, Sec. 30.43(c), eff. Sept. 1, 1997.

Text of [article\[0\]](#) effective until April 1, 2009

Art. 9026c. RENTAL CAR DAMAGE WAIVER.

#### Definitions

Sec. 1. In this [article\[0\]](#):

(1) "Rental company" means a person or other entity that is in the business of renting private passenger vehicles to the public for 30 days or less. The term does not include an individual or other entity who holds a license issued by the Motor Vehicle Board of the Texas Department of Transportation under the Texas Motor Vehicle Commission Code ([Article\[0\]](#) 4413(36), Vernon's Texas Civil Statutes) and whose primary business activity is not the renting of private passenger automobiles.

(2) "Renter" means a person or other entity that obtains the use of a private passenger vehicle from a rental company under terms of a rental agreement.

(3) "Rental agreement" means an agreement for 30 days or less setting forth the terms and conditions governing the use of a private passenger vehicle provided by a rental company.

(4) "Damage" means damage to or loss of a rented vehicle, including theft and loss of use, and any cost or expense incident to the damage or loss, including storage, impound, towing, and administrative charges, regardless of fault involved in the damage or loss.

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

(6) "Authorized driver" means:

(A) the renter;

(B) the renter's spouse if the spouse is a licensed driver and satisfies the rental company's minimum age requirement;

(C) the renter's employer, employee, or coworker if the person is a licensed driver, satisfies the rental company's minimum

age requirement, and at the time of the rental is engaged in a business activity with the renter;

(D) any person who is expressly listed by the rental company on the rental agreement as an authorized driver; and

(E) any person driving directly to a medical or police facility under circumstances reasonably believed to constitute an emergency and who is a licensed driver.

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

#### Prohibited Practices

Sec. 2. (a) A rental company may not sell a damage waiver unless the renter agrees to the damage waiver in writing at or before the time the rental agreement is executed.

(b) A rental company may not void a damage waiver except for one or more of the following reasons:

(1) the damage is caused intentionally by an authorized driver or as a result of wilful and wanton misconduct of an authorized driver;

(2) the damage arises out of the use of the vehicle while under the influence of alcohol, illegal drugs, a controlled substance, or any other intoxicant that impairs driving ability;

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

(4) the damage arises out of the use of the vehicle while engaged in the commission of a crime other than a traffic infraction;

(5) the damage arises out of the use of the vehicle to carry persons or property for hire, to push or tow anything, to engage in a speed contest, or for driver's training;

(6) the damage arises out of the use of the vehicle by a person other than an authorized driver; or

(7) the damage arises out of the use of the vehicle outside the continental United States and the use is not specifically authorized by the rental agreement.

#### Disclosure Notice Requirements

Sec. 3. (a) A rental company shall provide each renter who purchases a damage waiver that is not included in the base rental rate the following disclosure notice, which must be in at least 10-point type:

NOTICE: Your rental agreement offers, for an additional charge, an optional waiver to cover all or a part of your responsibility for damage to or loss of the vehicle. Before deciding whether to purchase the waiver, you may wish to determine whether your own

automobile insurance or credit card agreement provides you coverage for rental vehicle damage or loss and determine the amount of the deductible under your own insurance coverage. The purchase of the waiver is not mandatory. The waiver is not insurance.

(b) In addition to the notice provided to each renter who purchases a damage waiver, a rental company shall post in a conspicuous location where the waiver is being offered the following notice:

#### Notice to Texas Residents Regarding Damage Waivers

Your personal automobile insurance policy may or may not provide coverage for your responsibility for the loss of or damage to a rented vehicle during the rental term. Before deciding whether to purchase a damage waiver, you may wish to determine whether your automobile insurance policy provides you coverage for rental vehicle damage or loss. If you file a claim under your personal automobile insurance policy, your insurance company may choose to nonrenew your policy at your renewal date, but may do so only if you are at fault for the claim.

#### Mandatory Charges

Sec. 4. (a) In this section, "mandatory charge" means any charge, surcharge, or fee in addition to the base rental rate for an item or service provided in connection with a rental transaction that the renter does not have the option of avoiding or declining and that is not otherwise imposed by law.

(b) A rental agreement containing a mandatory charge must prominently display and fully disclose the charge:

(1) separately on the face of the agreement; and  
(2) in all of the rental company's price advertising, price displays, price quotes, and price offers, including displays in computerized reservation systems.

(c) A rental company may not impose or require the purchase of a damage waiver as a mandatory charge.

#### Prohibited Representations

Sec. 5. No oral or written representations shall be made by any employee or agent of the rental company which contradict the provisions of this [article\[0\]](#). No coercive language or action shall be used by any employee or agent of the rental company in an attempt to persuade a renter to purchase the damage waiver. For the purposes of this section, if the renter has declined the damage waiver, further statements or questions by an employee or agent of the rental company making reference to the damage waiver, other than a



statement that the waiver has been declined made in conjunction with a review of the rental agreement, shall be deemed coercive.

#### Penalty

Sec. 6. (a) A rental company that violates this [article\[0\]](#) is subject to a civil penalty in an amount of at least \$500 and not to exceed \$1,000 for each act of violation.

(b) A county or district attorney or the attorney general may institute and conduct a suit in the name of the state to recover the civil penalty, injunctive relief, or both the civil penalty and injunctive relief.

(c) Any person or entity injured or threatened with injury by a violation of this [article\[0\]](#) may seek injunctive relief against any company or person who violates or threatens to violate this [article\[0\]](#).

Added by Acts 1999, 76th Leg., ch. 1046, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [76](#), Sec. 1, eff. May 17, 2005.

Art. 9030. EXCURSION TRAIN OPERATORS; CERTIFICATION;  
LIMITATION OF LIABILITY.

#### Certification

Sec. 1. (a) A person may apply to the comptroller for certification as an operator of an excursion train. The comptroller shall certify an applicant if the comptroller determines that the applicant will operate a passenger train that:

- (1) is primarily used for tourism or public service; and
- (2) leads to the promotion of the tourist industry in Texas.

(b) The comptroller may not certify a person under Subsection (a) of this section unless the person files with the comptroller evidence of insurance providing coverage for liability resulting from injury to persons or damages to property in the amount of at least \$5,000,000 for the operation of the train.

(c) The comptroller may not certify an applicant under Subsection (a) of this section if the applicant or any person that owns an interest in the applicant also owns or operates a regularly scheduled passenger train service with interstate connections.

#### Limitation of Liability

Sec. 2. (a) A person that is certified as an operator of an excursion train under Section 1(a) of this Act and maintains insurance in the minimum amount required under Section 1(b) of this Act is not liable for injury or damages over \$5,000,000 resulting

from a single occurrence.

(b) The limitation of liability under Subsection (a) of this section applies to the person certified as an operator under Section 1(a) of this Act, the owner of equipment used by the excursion train, the owner of track used by the excursion train, and the host carrier.

(c) The limitation of liability under Subsection (a) of this section does not apply if:

(1) the injury or damages result from intentional, malicious, or grossly negligent conduct; or

(2) at the time of the injury or damages the operator of the excursion train:

(A) failed to maintain insurance as required under Section 1(b) of this Act; or

(B) failed to comply with Section 5 of this Act.

#### Application

Sec. 3. An application made under Section 1 of this Act must include:

(1) the name and address of each person who owns an interest of at least 10 percent in the applicant;

(2) an address in this state at which the excursion train is based;

(3) an operations plan including the route to be used and a schedule of operations and stops along the route; and

(4) evidence of insurance in an amount that meets the requirements of Section 1(b) of this Act.

#### Notice to Passengers

Sec. 4. The operator of an excursion train that is certified under Section 1(a) of this Act shall:

(1) issue each passenger a ticket with the following statement in 12-point boldface type: "THE OPERATOR OF THIS TRAIN IS NOT LIABLE FOR PERSONAL INJURY OR WRONGFUL DEATH IN AN AMOUNT IN EXCESS OF \$5,000,000"; and

(2) post notice near a passenger boarding area containing the same statement required in Subdivision (1) of this section in letters that are at least two inches high.

#### Restrictions

Sec. 5. The operator of an excursion train that is certified under Section 1(a) of this Act may not carry:

(1) freight other than the personal luggage of the passengers or crew or supplies and equipment necessary to serve the needs of the passengers and crew;

(2) passengers who are commuting to work; or

(3) passengers who are traveling to their final destination

solely for business or commercial purposes.

Acts 1995, 74th Leg., ch. 910, eff. Sept. 1, 1995.

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