CONSUMER PROTECTION IN TEXAS

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CONSUMER PROTECTION IN TEXAS

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CHAPTER I

CURRENT TRENDS AND PROBLEMS IN CONSUMER PROTECTION

Within recent years, there have been increasing demands for consumer protection at all levels. In a special message to Congress in 1962, the late President Kennedy asked the Congress to provide new legislative authority necessary for added consumer protection. "The march of technology," the President said, "has increased the difficulties of the consumer along with his opportunities."[1] Many new products, of common use, are highly complex, and the information needed for making choices is not always furnished. The rational choice between and among such products would require the skills of the "amateur electrician, mechanic, chemist, toxicologist, dietitian and mathematician."[2] Specifically, President Kennedy said:

> Consumer choice is influenced by mass advertising utilizing highly developed arts of persuasion. The consumer typically cannot know whether drug preparations meet minimum standards of safety, quality, and efficiency. He usually does not know how much he pays for consumer credit; whether one prepared food has more nutritional value than another; whether the performance of a product will in fact meet his needs; or whether the "large economy size" is really a bargain.[3]

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[1] House Document No. 364, Consumers' Protection and Interest Program (Washington, 1962), p. 2.

[2] Ibid.

[3] Ibid.

The President went on to say that three fourths of all the spending in the economy is by consumers, and that it is just as important to help the consumer make the best possible use of his income as it is to increase his income.

Consumer rights were outlined as being (1) the right to safety, to be protected against the marketing of goods hazardous to health or life; (2) the right to be informed, to be protected against fraudulent or misleading information, advertising, labeling or other practices, and to be given facts needed for an informed choice; (3) the right to choose, to have, whenever possible, access to a variety of products and services at competitive price; and in areas without competition, to be assured by government regulation of satisfactory quality and service at fair prices; (4) the right to be heard, to have the assurance that consumer interests will receive full consideration in the formulation of government policy, and fair and adequate treatment in administrative tribunals.[4]

President Kennedy made some specific recommendations for strengthening existing programs and for new legislative authority necessary for added consumer protection. These recommendations include a 25 per cent increase in the staff of the Food and Drug Administration, more money for meat and poultry inspection and control over pesticides, financial

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[4] Ibid., p. 455.

protection to the installment buyer and small loan borrower, truth in packaging, more consumer information and research, and more effective overall regulation by governmental agencies.[5]

In addition, the President directed his Council of Economic Advisors to create a Consumers' Advisory Council to examine broad government policy and specific government programs related to consumer needs, and to aid in disseminating consumer information to the general buying public.

One criticism of the Consumer Protection speech delivered by President Kennedy was made by the Consumer's Union, a non-profit organization designed to test and furnish scientific information concerning products to members. This organization suggested that a Department of the Consumer at cabinet level should be provided to carry out the fourth consumer right--the right to be heard.[6] Such a post would provide a central head for the bureaus, agencies, commissions and departments equipped with consumer advisors.

President Johnson has now taken a long step toward meeting this criticism. He has appointed Esther Peterson, Assistant Secretary of Labor, to act as Presidential Assistant in the field of Consumer Protection. Mrs. Peterson's office will serve as a central agency in receiving complaints and in supervising consumer protection. In a recent interview, Mrs. Peterson

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[5] Ibid., p. 5.

[6] "The President's Message on Consumer Protection," Consumer Reports, XXVII, No. 5 (May, 1962), 257.

expressed a genuine concern for the consumer in buying practices. She said that she did not envision price control, unless in an emergency such as World War II, but that better consumer protection could be achieved through a program of consumer education, added legislation, and better enforcement of existing laws.[7]

Such concern for consumer protection has not always been evident. Consumer protection is not new, but the need for it is greater than ever before. In the handicraft economy of earlier days, many articles were made in the home or by craftsmen in neighboring towns. The buyer was sufficiently near the seller for face-to-face confrontation if the purchased article proved to be unsatisfactory.[8] Under such conditions, the "let the buyer beware" philosophy prevailed.

With the growth of industry and technology, the face-to-face relations of the town artisan and his customers have been displaced by the impersonal buying of nationally known products. Frequent and flagrant abuse has been claimed in advertising products, in labeling, and in the misbranding or adulteration of goods.

One of the first efforts to protect the consumer was the Pure Food and Drug Act, passed in 1906. A revision of this Act was passed by Congress on June 6, 1933, and many other protective

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[7]Radio interview with Esther Peterson, "Moniter," WFAA, Dallas, Texas, February 1, 1964.

[8]"The President's Message on Consumer Protection," op. cit., p. 256.

laws have been passed in other areas.[9] This protective policy of the government is not supported by everyone. For example, the following letter to Consumer Reports magazine expresses opposition to government regulation:

> I continue to read with amusement your appalling cries for more government regulation as the answer to the deceptive packaging conspiracy. I'm afraid you miss the point. The real answer to this practice, as to any deceptive practice in a capitalistic nation, is the consumer, not the government. Regulation is merely our government's excuse for socializing the economy. The real controller should be the consumer. No one is forcing him to buy any product, his being too sloppy to count or too lazy to investigate is no excuse for handing his responsibility to the government. I agree that when a package says four slices and has only three, this is clear fraud. But you sacrifice the right of all manufacturers to decide their business technique in order to obtain an assured slice of pineapple. If the consumer would thinkingly and carefully deal with honest companies, no one but the dishonest would be hurt . . . .
>
> The rights of the wealth-creator must not be sacrificed for the alleged security of an uninformed public, and it is here that your magazine could honestly benefit your subscribers . . . not by crying for more government control, but by revealing deceptive practices of certain companies and leaving the decision to the consumer. Consumers need information, not regulation.[10]

This viewpoint is believed to be representative of others. In view of this opposition, current practices in consumer buying needs to be examined to determine whether governmental regulation is justified. To do this, a number of areas have been studied, particularly those that President Kennedy emphasized in his speech.

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[9] Ibid.

[10] Letter from "Reader's Reports," Consumer Reports, XXVIII, No. 8 (August, 1963), 362, 405.

According to Dr. Harold Aaron, Consumer Union's medical advisor, the "commercial policy of this nation invites anyone with initiative to enter the market place and sell whatever he can, short of harming his customers--and it need not be a better mouse trap. If it can be artfully enough promoted, it need not work at all."[11] This doctor's words appear to be substantiated in studying misleading advertising.

Dannon Yogurt has been promoted as a medicine with many properties, and the advertising claims that "it is known as nature's perfect food that science made better."[12] In addition, it was claimed that it would correct poor eating habits, has intrinsic reducing properties, anti-biotic properties, prophylactic or therapeutic values, and except in the plain form, contains fewer calories than the same quantity of milk. Under investigation by the Federal Trade Commission, the company offered the evidence that the World Book Encyclopedia referred to milk as the "most nearly perfect food" and that it was "mere puffing and not illegal to call yogurt a perfect food."[13] The FTC witness, a professional in nutrition, testified that yogurt when analyzed was found to lack certain well-defined nutrients,

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[11]Speech of Dr. Harold Aaron before National Association of Broadcasters, "Truth and TV," Consumer Reports, XXVII, No. 3 (March, 1962), 147.

[12]"Yogurt Challenged as Medicine," Consumer Reports, XXVII, No. 10 (October, 1962) 479.

[13]Ibid.

and that a person who ate nothing else would not be able to maintain his nutritional status. For this reason, yogurt could not be considered a perfect food.[14] This was not only false advertising, but the claims could be harmful to those who were led to depend on yogurt, rather than on proper medical care, for treatment. Clearly, the public needs to be protected by legislation on any practice where health is involved.

Any television viewer is familiar with the giant advertising campaigns for major brand aspirin. Oliver Fields, of the American Medical Associations Department of Investigation, testified before the Senate Special Committee on Aging in the 88th Congress that "aspirin tablets are all the same" and that consumers might as well buy the cheaper brand.[15] Dr. Robert E. Shank, chairman of the American Medical Association's Council on Foods and Nutrition, spoke out against medical quackery, particularly in advertising to the aged. Included in his indictment were the many vitamin-mineral distributors. "The vast majority of these," he said, "contain elements not needed in human nutrition or not shown to be lacking in conventional diets."[16]

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[14] Ibid.

[15] "Frauds Against the Aged," Consumer Reports, XVIII, No. 3 (March, 1963), 131.

[16] Ibid.

These doctors argued that the public does not get enough information, though it does get far too much misleading information about medical frauds that "may be lurking around any corner, behind any knock on the door, and at the other end of the line when the telephone rings."[17] The AMA's Oliver Fields expressed concern over the lack of regulation of people who advertise medical services.

Two areas of new legislation were put before the Special Committee on Aging. Commissioner George P. Larrick, of the U. S. Food and Drug Administration, cited the need for tighter controls over cosmetics, medical devices, and barbiturates, as well as increased factory inspection. Chairman Paul Rand Dixon, of the Federal Trade Commission, said his agency needs authority to issue temporary restraining orders against allegedly fraudulent or misleading advertising, and a Post Office official said similar authority is needed in policing direct mail frauds.

In these requests for added legislation or regulation by the government, it should be noted that in no instance is action asked against the consumer; the felt need is for control of the products to insure the safety and health of the purchaser, who cannot always have the means of detecting frauds in products.

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[17] Ibid.

Deceptive packaging is another current practice that is without regulation in many areas. Until the recent evolution of the package into a salesman, the chief aim of packaging laws has been taken for granted to be protection against short weight and slack fill.[18] These laws consist of provisions in the Federal Food, Drug and Cosmetic Act of 1938 and in the regulatory powers of the U. S. Treasury over liquor and tobacco products. At the state level, the laws in effect are the weights and measures statutes, some of them passed many years ago.

The intent of these measures was to protect the consumer from such dishonest gimmicks as: economy sizes that cost more; meaningless size terms such as "king," "jumbo," "super," and "giant;" meaningless descriptions in terms of an undefined number of servings; pictures on front panel misrepresenting the contents, and phony bargain implications in the form of "cents off." Court experience, however, show that the intent of a law is too often lost in interpretations made of it by the court or by enforcement agencies.[19]

Another weakness in Federal laws for consumer protection is that those dealing with packaging and weights and measures apply only to food, drug and cosmetics under FDA jurisdiction and to tobacco and liquor products under the Treasury. This

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[18]"Deceptive Packaging," Consumer Reports, XXVII, No. 7 (July, 1962), 358.

[19]Ibid.

leaves out such products as paper products, detergents, soap (specifically exempted from FDA control), household cleaners, soap pads, scouring powders, glue, shoe polish, nails, twine rope, pins, needles, thread, yarn, bleaches, fabric softeners, elastic materials, rubber goods, plastic products and so on.[20]

The use of additives, chemical substances, has been accelerated in food preparation and preservation within recent years. The variety of fruits and vegetables available in supermarkets throughout the year is possible through the use of sprays and dusts which growers use to combat insects, weeds, and other pests, and plant diseases. Many types of preservatives make it possible to market a much wider variety of foods.

Some of the most common food additives are nutrient supplements, non-nutritive sweeteners, preservation, emulsifiers, stablizers and thickeners, neutralizing agents, flavoring agents, and bleaching agents. These additives, in most instances, improve value and quality of foods; the danger is that an accumulation of chemicals added to several different foods eaten at the same time by a person might be detrimental.[21] Clearly, the only way to protect an individual against such a contingency would be to prohibit the addition of such food additives.

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[20]U. S. Department of Health, Education and Welfare, What Consumers Should Know About Food Additives, Pamphlet (Washington, 1960), p. 2.

[21]Ibid.

The average consumer has no way of determining the chemical content of the food which he eats.

Intangible Goods

The purchaser of consumer goods can, because they are tangible, exercise more judgment than in the purchase of intangible goods or services such as insurance, credit or housing costs. In the field of insurance the larger companies are very closely regulated and, as a rule, follow good business practices. Many small companies, particularly in the field of hospitalization, have inadequate reserve funds to carry out their obligations.[22] Texas insurance laws at the present time have been strenghened, but the mails are flooded with advertising of various types of insurance from out-of-state companies.[23] Uniform national legislation would be the source of remedial action.

In an article in U. S. News and World Report in February, 1964, some misgivings were expressed about the amount of indebtedness in the United States.[24] The fastest rising portion of private debt has been in borrowing by individuals and families. Mortgage debt has climbed from 27 billion dollars in 1945 to nearly 238 billion by 1963. Consumer installment and personal debt has risen from about 6 billion in 1945 to nearly 70 billion dollars today.[25]

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[22] The Dallas Morning News, July 18, 1963.

[23] Ibid.

[24] "Is Private Debt Too Big?" U. S. News and World Report, LVI (February, 17, 1964), 50-52.

[25] Ibid.

One reason for this is that it has been made easier to borrow and pile up debt. One can now buy a new car with a small down payment and get "standard" terms of 36 months to pay the balance. A house can be purchased for little or no down payment. The mortgage can run for thirty-five years, or even longer. Many merchants offer "nothing down, 30 months to pay" on furniture and appliances. The housewife has a charge account or a "revolving credit" that opens up entire department stores to "on the cuff" buying.[26]

The load consumers bear in carrying this debt is growing steadily heavier. Consumer debt payments, for principal and interest, last year exceeded 59 billion dollars. The danger to the consumer in this is that the cost of consumer credit is usually disguised, and the borrower will often pay, unwittingly, a staggering rate of interest.[27]

A number of examples illustrate how the hidden interest charges operate. A federal employee in New Mexico bought a television set for $285.55, at the rate of $14.00 per month. Nothing was said about interest, credit, or finance charges by the dealer. Over the course of ten months he paid $147.30. Only then, looking at the paper he had signed, did he discover

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[26] Ibid.

[27] "When You Borrow . . . Watch Those Interest Rates," Reader's Digest, LXXXIII (November, 1963), 157.

that he still owed $206.22. He had been charged $67.97 to finance the purchase, an annual interest rate of 33 per cent.[28]

A mechanic in Texas bought $1,812.80 worth of household furniture on the basis of 36 monthly installments of $56.34 each. After he was unable to meet his obligation, he stopped to figure the cost of financing, which in this instance was $477.24, a true annual rate of 19.4 per cent.[29]

These borrowers, like millions of others, are victims of a credit system cleverly contrived. The traditional way of stating the cost of credit is in terms of the annual interest rate, the custom of business and home mortgages. In consumer credit, however, the cost of credit is too often figured in a deceptive manner to make the cost of borrowing appear cheap when in reality it is deceptively high. Four main methods are used in doing this:

1. The Add-On--Banks may offer a loan at the cost of $6.00 per $100.00, adding the interest charge right away onto the principal which is then repaid in twelve monthly installments. Because the borrower is steadily paying the loan over the course of the year, the average amount of his loan is about $50.00; yet he pays a full $6.00 interest on $100.00.

2. The Discount--In this case, the interest charge of $6.00 per $100.00 is deducted when the loan is made, so the borrower actually receives $94.00. In this manner, he is being

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[28] Ibid.

[29] Ibid.

charged $6.00 not on a full $100.00, but only on $94.00, in addition to paying interest on parts of the loan after they have been repaid. This method yields a higher return rate of interest than the add-on charge.

3. Monthly Rate--Small-loan companies often quote interest rates of 1½ to 3½ per cent per month. Although such rates make borrowing sound cheap, loans are usually made over a period of months, and the true annual rate will range from 18 to 42 per cent.

Revolving credit accounts come under this category of monthly rates of interest. In credit accounts interest is called "service charge." Many customers have no idea that they are really paying 18 per cent interest for the convenience of charging.

4. No Interest Rate Quoted--Here the seller sets up the amount of down payment and of the installments to be paid over a period of time. The total credit cost may not be mentioned in the contract. In today's competition for the customer's dollar, many large sales are on the basis of no down payment.[30]

The credit charge may also be loaded with extras--processing charges, service charges, high premiums for insurance.

One reason advanced for these practices is that consumer installment buying cannot be financed by the seller on the

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[30] Ibid.

basis of 6 per cent interest. Edward Gudeman, Under-Secretary of Commerce, points out:

> Under the conditions applying to a modern installment credit system, the idea of only a 6 per cent credit charge is a myth--and the public should be aware of it. Consumers should know the real cost of credit.[31]

It is at this point that the consumer needs protection by legislation. It cannot be denied that many borrowers are careless; they sign blank contracts, fail to ask the most elementary questions, neglect to read the fine print. Consumer education can be one way of meeting this problem, but even the prudent, educated individual can have difficulty in determining whether it is cheaper to take an "add on" rate of $6.00 per $100.00 from a bank, or a 1½ per cent per month rate from a small loan company, or a down-payment, installment loan from a furniture dealer. Even one not versed in finance can tell from the enormous amount of money involved in installment buying--consumer debt in 1963 was about 63 billion dollars, with $13.00 out of every $100.00 in after-tax personal income going to pay installment loans[32]--that the nation's economy is largely based on credit buying. Both public and private interest, therefore, are involved in the question.

In the field of protective legislation, Senator Paul H. Douglas of Illinois has attempted to provide a standard method of credit-labeling to make price comparisons meaningful, through

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[31] Ibid.

[32] Ibid.

a truth-in-lending bill. Cosponsered by nineteen other Senators, the bill would require that lenders state finance charges in two different ways, in dollars and cents, and also as a simple annual rate.[33] The information would have to be given to customers in writing, before a transaction was closed. Then, if the customer felt that he needed the goods sufficiently he might be warranted in paying a high rate of interest, but at least he would be aware that he was paying it.

The bill has met with various reactions. It has the support of credit unions, savings and loan associations, consumer groups, and trade unions. Opposition has come from retailers' associations, automobile dealers, small-loan companies. The National Association of Mutual Savings Banks supports the bill, while the American Bankers Association opposes it.[34]

Much more material is available to support the late President Kennedy's statement that rational choice in the purchase of consumer goods would require the skills of the "amateur electrician, mechanic, chemist, toxicologist, dietitian, and mathematician,"[35] and that new legislative authority necessary for added consumer protection is necessary. Consumer protection, it should be added, in this sense does not mean

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[33] Ibid. [34] Ibid.

[35] House Document No. 364, op. cit., p. 3.

price-fixing; it means legislation to prevent the seller from using deceptive means in advertising or in credit rates cleverly concealed.

The main purpose of this chapter is to point out the problems that exist in today's economy as far as consumer protection is concerned, and to show that consumer protection is necessary if the market economy is to function properly. In the study, as a whole, the purpose is to present the major laws for consumer protection in Texas in the existing economy and determine the extent to which they meet consumer protection standards and where they fail to meet such standards.

In presenting the laws of Texas for consumer protection, it should be noted that many laws have been passed by the Federal government. These laws, however, apply to goods in interstate commerce; the consumer must depend upon the state and local government for protective legislation in many areas not involving interstate trade. To supplement the federal legislation, it is very important that each state have adequate legislation and that such information be readily available to the public.

CHAPTER II

CONSUMER PROTECTION IN TEXAS

The question is how well is the Texas consumer protected by State law in his spending activities? Does the law provide adequate protection or are there areas wherein he lacks protection? To provide an adequate answer, it is necessary to examine consumer protective laws by type and category. Such an examination of consumer protection at all levels--food, medicine, public facilities and services, cosmetics, insurance, weights and measures, financial and credit institutions, utilities, securities, and transportation--is the primary interest of this study. These levels of consumer spending will be separately investigated in conjunction with a further study of the problems that exist within each category.

Food

Purchasing food today is much more complicated than it was even a few years ago. Fewer and fewer people raise their vegetables, fruits, and meats; nearly all of them depend upon the corner grocery or the large supermarket. Frozen foods, packaged meats, food products, and fresh vegetables shipped in from hundreds of miles away complicate the buying situation.

The food purchaser cannot always depend upon the senses, sight, smell or touch, to determine what is a good buy, or if a product has been prepared in a sanitary manner, is correct in weight, or is free from harmful additives. However, the modern homemaker "commonly gives more attention to good appearance, uniform color . . ., lack of visible damage . . . than she does to food quality and nutritive values."[1] In the purchasing act, the consumer must often rely entirely on the consumer laws that specify certain standards for quality, sanitation and labeling.

In Texas the basic and most general law regulating the sale of food is Article 4476-5, Texas Food, Drug and Cosmetic Act.[2] Enforcement of this law and other laws pertaining to the protection of the consumer in these fields is under the direction of the State Health Officer, with a Division Director. This director keeps his office and laboratory in Austin; makes, publishes, and enforces rules consistent with the law, adopts standards for foods, food products, beverages, drugs and inquires into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in the State.[3] To enforce the provisions of this Act, he may

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[1]"Poisons in Our Foods--Chemical Additives," Consumer Bulletin (Washington, N. J., 1962-1963), XXXVII, 12.

[2]Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 14.

[3]Ibid., p. 1.

appoint two inspectors who will make inspections and perform other required duties. With the consent of the State Health Officer, he may appoint two assistant chemists, and additional inspectors and assistants.[4]

For the purpose of definition, a food "means (1) articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article."[5] Article 4471 specifies that

> No person or corporation within the state may manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sale or exchange any article of food which is adulterated or misbranded.[6]

Article 4476-5, Section 10 specifies that

> A food shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance . . . injurious to health . . . (2) if it bears or contains any added poisonous or added delterious substance which is unsafe . . . (3) if it contains . . . food additive which is unsafe . . . (4) or if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods . . . .
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> (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly oriin part thereof; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality

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[4] Ibid., p. 2.

[5] Ibid., p. 14.

[6] Vernon's Code of Civil Statutes, Art. 4471, XIIA, 324.

> or strength or make it appear better or of greater value than it is . . . .[7]

Misbranded foods generally are those whose labeling is false or misleading, or which are offered for sale under the name of another food, or in a container made to be misleading, or if an inaccurate statement of quantity of the content in terms of weight, measure or numerical count.[8]

Obviously, the food manufacturer is the one held responsible for carrying out these provisions. The Director of the Division of Food and Drugs of the State Department of Health is charged by law with the enforcement of them. It is his duty to

> Inquire into the quality of the foods manufactured or sold or exposed for sale . . . and for such purpose he may enter any creamery, factory, storeroom, or place where he has reason to believe foods are prepared, sold, or offered for sale or exchange, and open any cask, tube, jar, bottle, or package containing or supposed to contain any article of food . . . and examine or cause to be examined the contents thereof.[9]

Whenever a duly authorized agent of the Commissioner of Health finds or has reason to believe that food is adulterated or misbranded, he shall affix a tag or other appropriate marking. When an article is so tagged it cannot be removed from the premises or disposed of by sale or otherwise. If further analysis shows the article to be adulterated or misbranded,

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[7]Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 23.

[8]Ibid.

[9]Ibid., Art. 4466, p. 1.

petition for an order for condemnation of such article is made to the district court in whose jurisdiction the article is located.[10] In addition, a temporary or permanent injunction restraining any person from violating the provisions of this act may be applied for in the district court where the offense occurred.[11]

If the adulterated or misbranded article can be corrected by proper labeling or processing, it may be corrected by the claimant under the supervision of an agent of the Commissioner of Health. If it cannot be corrected, it must be destroyed at the expense of the claimant.[12]

No criminal proceedings will be started if the adulterated or misbranded article is voluntarily destroyed.[13]

In the case of minor violations, whenever the Commissioner of Health believes that a suitable written notice or warning adequately serves the public interest, it is not required that such violations be reported for the institution of proceedings.[14]

Within the law, there are specific provisions governing the standards of quality, sanitation and safety of specific foods. Following is an examination of these laws.

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[10] Ibid., Art. 4476-5, p. 19.

[11] Ibid.

[12] Ibid., p. 20.

[13] Ibid.

[14] Ibid., p. 21.

Meats

The consumer has a two-fold interest in the regulation of meat and meat products. He desires meat that is both edible and free from disease-carrying bacteria and elements.

In order to make this possible, it is essential that the state have regulations under which meat is slaughtered, processed and sold, and regulations on the quality and condition of the meat itself. Following are the regulations governing meat, meat by-products and prepared meats as to the cleanliness and regulation of the processing, handling and labeling.

Article 4476-5, Section 10, specifies that meat from an animal is adulterated if

> . . . it is the product of a diseased animal or an animal which has died otherwise than slaughter, or that has been fed upon the uncooked offal from a slaughter house; or if its container is decomposed, in whole or in part, or any poisonous or deleterious substance which may render the contents injurious to health.[15]

Chemicals are often added to meat to produce and retain a fresh looking color. Cases of poisoning have occurred from this practice.[16] However, use of chemicals is controlled with the specification that meat is also adulterated if

> . . . it be fresh meat and it contains sulphites, sulphur dioxide, or any other chemical preservation which is not approved by the United States Bureau of Animal Husbandry or the Commissioner of Health.[17]

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[15] Ibid., Art. 4466, p. 21.

[16] "Poisons in Our Foods--Chemical Additives," op. cit., p. 13.

[17] Texas Food, Drug and Cosmetic Laws, Art. 4466, p. 21.

Inspectors are provided by the State Health Department to inspect all slaughter houses, meat canning, sausage factories, salt packing, rendering, or other such establishments dealing in meat products.[18]

If these establishments do not conform to the sanitary standards and quality specifications of the law, the inspectors are "authorized and empowered to condemn meat or meat products."[19] If condemned, these products cannot then be sold for human consumption.

In order for meat to be sold in Texas, it must bare a stamp specified as the Texas State Approved Establishment Number _____. This stamp is applied by an authorized person of the State Health Department to meat or meat products which are found to be wholesome, healthful and fit for human consumption.[20]

The law prohibits the use of the Texas State Approved Establishment Number, or any other label or device regarding the safety, the sanitary or wholesome quality of meat to be sold for human consumption, in any manner which is misleading.[21]

Section 14, Article 4476-3 gives the State Health Officer the authority to revoke the license of any violator of the use of the Texas State Approved Establishment Number.[22]

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[18] Vernon's Code of Civil Statutes, Artic 4476-3, XIIA, 334-430.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Ibid.

Milk

Milk and milk products are a major part of most daily diets in the United States. It provides many necessary nutrients needed by man, but unfortunately is a veritable breeding house for harmful bacteria. These bacteria may get into the milk from a diseased animal or from human contact with milk.[23] For these reasons, sanitary dairy products and quality control are very important to the consumer.

Information labeling is also necessary so that the shopper may be able to determine just what it is he is buying. One has only to visit the supermarket to find several types of milk, such as Homogenized, Vitamin D, Grade A Pasteurized, Fortified Skim Milk. Half and Half, Coffee Cream or Whipping Cream are among the different types of cream that can be found. An investigation of the Texas laws has not found any specific law defining the different types of cream or requiring that the butterfat content be shown on the label of various creams.

While Texas Dairy laws are definitely lacking on specific dairy products in requirements for labeling and definition, the statutes governing sanitation and quality control in the manufacture and sale of dairy products appear quite thorough.

To examine some of the basic laws governing the sanitation and quality control of dairy products, a beginning can be made

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[23]Harold S. Diehl, Textbook of Healthful Living (New York, 1960), pp. 110-111.

with Article 4474, which specifies that no person or agent shall sell or expose for sale any unwholesome, watered, adulterated, or swill milk or milk from cows kept on garbage. Cows must be free from disease and kept from contact with any family which may have an infectious disease.[24]

The Commissioner of Agriculture, his inspectors, or agents are authorized to enter any creamery, cheese factory, building or premises or any place where dairy products are handled for the purpose of securing samples to check for butterfat content and standard weights and measures. All glassware and measuring devices found not to be standard in capacity shall be destroyed by the Commissioner or his agents. Violations of any of these requirements shall be reported to the county or district attorney.[25]

Further regulations governing quality of dairy products are specified:

> Milk for sale must contain not less than 8½% of milk solids not fat and not less than 3/4% of milk fat. Milk for sale may not be obtained from cows within fifteen days before or five days after calving; or such period as may be necessary to render the milk practically colustrum free.[26]

Cream is defined as that portion of milk which contains not less than 18 per cent milk fat, and the acidity of which is not more than 0.20 per cent expressed as lactic acid.[27]

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[24] Texas Food, Drug and Cosmetic Laws, Art. 4474, p. 3.

[25] Ibid.

[26] Ibid., Art. 165-3, p. 40.

[27] Ibid.

Skim milk is milk from which a sufficient portion of milk fat has been recovered to reduce its milk fat percentage to less than 3½ per cent.[28]

The law further specifies that:

> Milk products shall be taken to mean and include cream, vitamin D milk, buttermilk, cultured milk, skim milk, reconstructed or recombined milk, milk beverages, and skim milk beverages . . . ice cream, milk powder, condensed milk, butter, cheese or similar products.[29]

Each of the above types of dairy products is defined by law. For example, Vitamin D milk is milk of which the Vitamin D content has been increased by a method and in an amount specified by the State Health Officer.[30]

Milk is difficult to obtain, transport, or deliver in a sanitary condition. However, disease producing germs found in milk are easily killed by heating milk to a temperature which does not change the food value (pasteurization). The number of states passing legislation requiring pasteurization of all milk or milk products sold to the public is increasing every year.[31] However, Texas is among those states that allow for such products to be sold in the raw state.

The specifications for the production of raw milk products are based upon quality standards, according to safety, to food

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[28] Ibid.

[29] Ibid.

[30] Ibid., p. 41.

[31] Diehl, pp. 110-111.

value, and to sanitary conditions of production and handling. Grades are "A," "B," "C," and "D," and must be based upon and in harmony with the current United States Public Health Service Milk Ordinance, with first quality grade "A," second quality grade "B,", and so forth.[32]

Under Texas law, for milk to be sold as pasteurized, it must be heated to 142°F for a period of not less than thirty minutes. The State Health Officer determines the grades of Pasteurized milk and pasteurized milk products by standards of safety, of food value, and of sanitary conditions under which the milk is handled and produced. Grades are "A," "B" and "C," and must be based upon and in harmony with the specifications for these grades of pasteurized milk and milk products as set forth in the current United States Public Health Milk Ordinance.[33]

In order for any firm, association or corporation to use any grade "A," "B," "C," or "D" label in the sale of milk products, it must first make application for a permit to the City Health Officer in the incorporated city where it is to be sold. If the label is to be used in the sale of milk outside the city limits, then application for permit is made to the County Health Officer in the county where it is to be sold.[34]

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[32]Texas Food, Drug and Cosmetic Laws, Art. 165-3, p. 42.

[33]Ibid., pp. 40-42.

[34]Ibid., p. 43.

No milk or milk product produced or offered for sale within the State of Texas may carry the label "A" or "B" or any other type of label which is misleading or which does not conform to the definitions and requirements of this act.[35]

The State Health Officer has the power to revoke or re-grade permits issued by any local health officials, when examination finds that such permit for the use of any grade does not conform to the specifications or requirements promulgated by him in conformity to this act.[36]

The penalty for violators of any provision of this act shall be a fine in the sum of not less than $25.00 nor more than $200.00, and each separate violation shall constitute a separate offense.[37]

Fresh Fruits and Vegetables

In buying fresh fruits and vegetables the consumer is interested mainly in the grade. All fruits and vegetables have standard grades as established by law.[38] However, the terms used in grading are not sharply defined, and can be misleading to the consumer.

For example, tomatoes have two grades--fancy and choice.[39] Texas standard oranges and grapefruit have four grades--fancy

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[35] Ibid. [36] Ibid. [37] Ibid., p. 45.

[38] Vernon's Code of Civil Statutes, Art. 110, I, 278.

[39] Ibid.

bright, bright, fancy russet, and russet. The bright grade differs from the fancy bright in that the bright may have a texture not as smooth or fine as the fancy bright, and also may have skin defects. Fancy russet and russet grades differ slightly from the first two in color.[40] Peaches are graded by number one and two. The grade is determined mainly by the size, color and ripeness. The variety must be named when shipped.[41]

All fruits from both fancy and choice grades must be sound and free from undesirable scars and damage from insects or other causes.[42]

Every package of fruit and vegetables offered for sale or shipment must be plainly stamped with the grade and the post office address of the person shipping the produce.[43] The grades apply only to those established by laws.

Culls are those that are too small in shape or size for marking. They must be marked "culls," and shipped in separate containers.[44]

Fruits are often picked green and immature and colored artificially to look ripe.[45] To safeguard the consumer from harmful coloring matter, the law specifies that no manufacturer shall use any dye or coloring for food except that which has

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[40] Ibid. [41] Ibid., p. 276. [42] Ibid.

[43] Ibid., p. 277. [44] Ibid.

[45] "Poison in Our Foods--Chemical Additives," op. cit., p. 13.

certified by the United States Department of Agriculture.[46] Before coloring matter can be added to food, namely fruits, it must follow certain chemical requirements of the state maturity test.[47]

Breads and Flour

No study of laws governing the manufacture and sale of specific foods would be complete without the inclusion of bread and flour.

Flour is defined as including and limited to flour of every kind made wholly or partly from wheat, but excluding whole wheat flour made only from the whole wheat berry.[48]

The majority of flour purchased by the consumer has had the hull of the wheat berry removed in the milling process. With the removal of the hull, certain vitamin B complex factors and other necessary nutritional factors are lost.[49]

Bread and flour enrichment is of primary importance because bread constitutes one of the main sources of calories in the American diet. Texas is among the majority of states with laws requiring that certain nutritional additives be added

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[46] Vernon's Code of Civil Statutes, Art. 110, I, 278.

[47] Ibid.

[48] Texas Food, Drug and Cosmetic Laws, Art. 4476-1, pp. 4-5.

[49] Lenna F. Cooper and others, Health and Disease (Philadelphia, 1958), p. 27.

to all flour manufactured or sold in this state.[50] The law specifies that to each pound of flour, the following must be added:

> Not less than 1.66 milligrams of Vitamin B (Thiamin); not less than 6 milligrams of nicotinic acid; and not less than 6 milligrams of iron.[51]

These ingredients and amounts are in accordance with the definitions of enriched flour as promulgated by the Federal Security Agency.

The State Health Officer has the power to change the specifications for ingredients to conform to the federal definition of enriched bread when promulgated or as from time to time amended.[52]

The power to enforce this law is given to the State Health Officer. He, or any officer or employee under his supervision, shall have authority to enter to inspect any "flour mill, warehouse, shop or establishment where flour or bread is manufactured, processed, packed, sold or held, or any vehicle, and any flour or bread therein; and all pertinent equipment, materials, containers and labeling.[53]

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[50] Texas Food, Drug and Cosmetic Laws, p. 5.

[51] Ibid.

[52] Ibid.

[53] Ibid., pp. 8-9.

The penalty for violation of this act is a fine not exceeding $100.00 or imprisonment for more than thirty days, or both fine and imprisonment.[54]

Article 719 governs the sanitation and quality of the ". . . production, preparation, storage or display of breads, cakes, pies and other bakery products intended for sale for human consumption . . . ."[55]

Each bakery building must be " . . . clean, properly lighted, drained, and ventilated."[56] Toilet and water closets must be separated from the room where bakery products are produced or handled. Walls, floors and ceilings where dough is mixed or handled must be clean. No working rooms may be used for washing, sleeping or living rooms.[57]

No employee is allowed to sit on any table, bench, trough, or shelf which is intended for the dough or bakery products. Before beginning work, he is required to wash his hands and arms thoroughly. No employee is allowed to use tobacco of any kind where bakery products are manufactured, wrapped or prepared for sale. Every baker or employee must be free from any infectious or contagious disease.[58]

To insure that bread be transported under sanitary conditions, the law specifies that the wagons, boxes, baskets and

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[54] Ibid., p. 9.
[55] Ibid., p. 72.
[56] Ibid.
[57] Ibid.
[58] Ibid., p. 76.

other receptacles in which bread . . ., or other bakery products are transported, shall be kept in clean and wholesome condition at all times and free from dust, flies, and other contaminations.[59]

The ingredients used in bread and the production of other bakery products must comply with the provisions of the law against adulteration and misbranding.[60]

Self-rising flour, being defined as a combination of flour, salt and leavening ingredients, must meet certain specifications for labeling and standards of quality. The label must bear the name and domicle of the manufacture or dealer and the percentage by weight of each of the chemical leavening ingredients. Only those leavening ingredients specified by law may be used as such and these agents may not compose more than three and one-half per cent of the total weight of the flour.[61]

Corn Meal and Grits

Like flour, corn meal makes up a large portion of many daily diets in the southern states. Texas is among the several southern states that require the enrichment of corn meal and grits.[62]

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[59] Ibid., p. 73.

[60] Ibid.

[61] Ibid., Art. 4476, p. 10.

[62] Cooper, p. 27.

The law specifies that all corn meal or corn grits intended for human consumption must be enriched with certain ingredients in order to be sold in Texas. Each pound must contain:

> (a) not less than 2.0 milligrams and not more than 3.0 milligrams of Vitamin B^1 (Thiamin); (b) not less than 1.2 milligrams and not more than 1.8 milligrams of riboflavin; (c) not less than 16 milligrams and not more than 24 milligrams of niacin, or niacin amide; (d) not less than 13 milligrams and not more than 26 milligrams of iron.[63]

Eggs

Laws affecting the production and sale of eggs are found in Article 165-8.

Eggs are graded by standards of size as determined by weighing and condition of the shell as determined by candling. Grades are in accordance with the standards and grades promulgated by the United States Department of Agriculture.[64]

All eggs offered for sale that are not graded or weighed shall be marked "Ungraded."[65]

All containers for eggs must be labeled according to size and grade in distinctly legible face type, not less than one fourth inch in height. The container must state the name of the dealer or agent for whom the eggs were graded. If eggs

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[63] Texas Food, Drug and Cosmetic Laws, pp. 10-11.

[64] Vernon's Code of Civil Statutes, Art. 165-8, I, 476.

[65] Ibid.

are offered for sale uncartoned, a sign showing the proper grade and size must be in letters at least one inch high.[66]

The law provides that all containers in which eggs are offered for sale cannot be deceptively labeled, or advertised in a manner which indicates price without also indicating the full designation of size and grade.[67]

Eggs must be labeled cold storage eggs if the eggs have been under refrigeration for thirty days or more.[68]

The authority for enforcement of the laws governing the sale of eggs is given to the Commissioner of Agriculture. He or any of his assistants may enter into any place of business where eggs are held and secure samples of eggs and containers for the purpose of determining whether or not any provisions of the law have been violated.[69]

Violation of this act results in a misdemeanor and upon conviction constitutes a fine of from $50.00 to $1,000.00 and suspension of license for a period of nor more than 90 days.[70]

Evaluation of Food Laws

In beginning the discussion of food, the basic need for legislation was pointed out. Although Texas laws in this

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[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Ibid.

[70] Ibid.

category of spending are numerous and broad in scope, they are definitely lacking within certain areas.

In summary, laws governing the production and marketing of meat are quite strict. The same may be said for milk products, with the exception of the labeling of various types of cream products as to butterfat content.

Laws requiring that certain foods be enriched with vitamins and minerals, where a need has been shown, appear to be adequate when compared with other states. Texas is among the majority of states requiring the enrichment of bread; and among the several southern states requiring the enrichment of corn meal and grits. Oleomargarine, not heretofore mentioned, is also among the several types of food in which enrichment is required by law. Some brands of margarine have vitamin D added,[71] and all brands are required by Texas law to be fortified with at least 9,000 United States Pharmacopeia Units of Vitamin A per pound.[72]

As seen, Texas law explicitly prohibits deceptive labeling of food as to quality and quantity. However, as pointed out in Chapter I, the intention of the law and the actual application of such are often two different matters. For example, the use of such nebulous adjectives as "jumbo," "giant," and

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[71]Diehl, p. 30.

[72]Texas Food, Drug and Cosmetic Laws, Art. 4476-2, p. 9.

"economy" size may be confusing and misleading to the consumer, but the use of such terms has not been deemed in violation of the law.

Another weakness within the food laws is the lack of legislation pertaining to the labeling of canned goods, and inadequate provisions requiring informative grading of fresh fruits and vegetables. The use of such unclear terms as "fancy bright" or "fancy russet" in the grading of grapefruit mean little to the consumer. In the grading of tomatoes, "fancy" and "choice" are not informative and can be misleading since "choice" actually means a grade inferior to "fancy."

No legislation has been found which applies to the major problem area in the transporting, storage and marketing of frozen foods. Once a food is frozen and then thawed, it deteriorates rapidly. The possibility of this occurring between the time the food is first frozen and the time it is purchased does exist. The consumer has no way of knowing the condition of frozen foods at the time of purchase.

Medicine and Health

In 1961, Americans spent 5.7 per cent of gross national product on medical care. These expenditures included drugs, physicians services, dental care, eyeglasses, hospital care, nursing home fees and other professional services.

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[73]Edwin D. Goldfield and others, Statistical Abstract of the United States (Washington, D. C., 1963), p. 76.

The primary concern here is how well the individual is protected by law regarding the safety, quality and professional qualifications of the above.

Drugs

The laws regulating the manufacture and sale of drugs which do not enter into interstate commerce are found in Article 4476-5 of the Texas Food, Drug and Cosmetic Act and in the Dangerous Drug Act. Responsibility for the enforcement of the drug laws set forth in the Food, Drug and Cosmetic Act rests with the State Health Officer, and are primarily concerned with drugs sold on the retail level that are unsafe for self-medication.

The term drug is defined as articles recognized in the official United States Pharmacopeia, official Hemopathic Pharmacopeia of the United States, or official National Formulary or any supplement of any of them; articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.[74]

Texas law, similar to the federal law governing drugs, prohibits the manufacture, processing, packaging or selling of adulterated or misbranded drugs.

Article 4476-5, Section 14, specifies that a drug is adulterated (1) if it consists of a filthy substance or is

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[74]Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 14.

held or packed under unsanitary conditions or if the drug, for the purposes of coloring only, contains a coal tar color other than one approved by the federal act; (2) if it is a drug recognized in an official compendium and its strength differs from, or its quality falls below the official standard.[75]

Under Texas law, a drug is misbranded if the label is false or misleading.[76]

According to the Federal Food and Drug Administration, the labeling of drugs in package form is most essential to the health of one consuming the drugs. The F. D. A. advises that the label should be informative, indicating for what purposes the medicine is to be taken, how much to take and for how long, and when the medicine should not be taken.[77]

Under Texas law, warnings must be shown on the label against unsafe dosage, or for use by children where the use might be dangerous, and the directions for safe dosage must be plainly stated. The label must show the name and place of business of the manufacturer, packer, or distributor, and must contain an accurate statement of the quantity of the contents in terms of weight, measure or numerical count. The Texas laws further specify that all information must be prominently placed

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[75] Ibid., pp. 26-27.

[76] Ibid., pp. 27-29.

[77] Read the Label (Washington, D. C., 1961), p. 18.

and in laymen's language. If the drug contains any habit forming drugs, its label must display the statement "Warning: May Be Habit Forming." If it is a drug sold only by prescription, the label must bear the name and place of business of the seller, the serial number and date of such prescriptions, and the name of such member of the medical, dental, or veterinarian profession prescribing such prescription.[78]

Any label not conforming to the above criteria is deemed misbranded under the law.

Further regulations state that a drug is misbranded if the drug or its container is so made or filled as to be misleading, or if it is the imitation of another drug or if it is offered for sale under the name of another drug.[79]

An article suspected as being adulterated or misbranded may be tagged by authorized agents of the Commissioner of Health, and court order for correction or condemnation of such article may be sought through the district courts through injunction. As in the case of foods, a suitable written notice or warning of minor violations may be issued by the Commissioner of Health where he believes such notice will adequately serve the public interest.[80]

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[78] Texas Food, Drug and Cosmetic Laws, Art. 4476-5, pp. 27-29.

[79] Ibid.

[80] Ibid., pp. 18-21.

The exposure of Thalidomide "with its tragic harvest of deformed children"[81] shows clearly the need for adequate legislation regarding the manufacture and sale of new drugs. Following the Thalidomide episode of 1962, the Federal government passed the toughest regulation in twenty-four years governing the manufacture and testing of new drugs.[82] In 1963, the Texas legislation passed similar legislation regarding new drugs.

Under Texas law, a new drug is defined as one whose composition is not recognized by qualified experts as safe for use under the conditions suggested in the labeling thereof, or a drug that is recognized as safe under the conditions of the labeling, but has not been used to a material extent for a material time.[83]

Under Texas law, a new drug qualifies to be sold when an application has become effective under Section 505 of the Federal Act, or when not subject to federal law, an application must be filed with the State Commissioner of Health giving a full report as to the investigations concerning the safety of the drug. If the Health Officer is not satisfied as to the drug's safety, he can refuse to permit the application to become

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[81]"Another Drug Inquiry," Newsweek, LXIII, No. 8 (February 24, 1964), 57.

[82]Ibid.

[83]Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 15.

effective. However, it should be pointed out that the above law does not apply to drugs used by qualified persons for investigational purposes.[84]

Texas legislation regulating "dangerous drugs" is distinct from that covering narcotics. The Texas Dangerous Drug Law was enacted in 1959 and defines a dangerous drug as: (1) One unsafe for self-medication. This law includes any drug which bears the legend "Caution: Federal Law Prohibits Dispensing Without Prescription;" (2) the barbituate, often referred to as sleeping pills, or other drugs which produce a hypnotic effect.[85] However, a drug containing a barbituate or one of its derivatives may still be sold if it is mixed with a sufficient quantity or proportion of another drug so as to prevent the ingestion of a sufficient amount of barbituate to cause a hypnotic or somnifacient effect;[86] (3) central nervous system stimulants that are defined as amphetamine, desoxyephedrine or compounds thereof, except preparations for use in the nose or unfit for internal use are considered dangerous drugs; and (4) certain other specified compounds including sulpha drugs and typhoid compounds.[87] It should be noted, however, that the law is not limited to those named specifically

[84] Ibid., pp. 29-30.

[85] Texas Dangerous Drug Law, pp. 3-4.

[86] Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 29.

[87] Texas Dangerous Drug Law, p. 4.

in the law. For example, Texas does not have a law exclusively devoted to regulating retail sales of penicillin, however, "it is possible for state officials . . . to declare that these drugs by reason of their toxicity are not safe for use except under the supervision of a practitioner licensed by law to administer such drug, and they would be salable only on written or oral prescriptions."[88]

The law specifically forbids dispensing of dangerous drugs except through the written or oral prescription of a physician, dentist or veterinarian. The same requirements for labeling of prescription drugs are required as specified in Article 4476-5, Section 15, of the Texas Food, Drug and Cosmetic Act.[89] The prescription may be refilled only if it is so designated on the prescription by the practitioner, or with the authorization of the practitioner at the time of refilling.[90]

The pharmacist must file and retain prescriptions, and upon the written request of a duly authorized agent of the State Board of Pharmacy, must make such files and records available for inspection, and allow full inventory of stock on hand.[91]

All dangerous drugs manufactured, sold, or held contrary to the provisions of this act are considered contraband and subject to seizure and confiscation, and such drugs may be destroyed.[92]

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[88]William Pettit, Manual of Pharmaceutical Law (New York, 1962), p. 17.

[89]Texas Food, Drug and Cosmetic Laws, pp. 27-29.

[90]Texas Dangerous Drug Law, p. 5.

[91]Ibid., p. 7.

[92]Ibid., p. 8.

Violations of any of the provisions of this Act are subject to a fine not exceeding $3,000.00 and/or imprisonment from thirty days to two years. Subsequent violations are punishable by imprisonment from two to ten years, and such verdict is not subject to the suspended sentence laws.[93]

The law specifies that only a licensed pharmacist may conduct or manage a pharmacy or any other type of business for retailing, compounding or dispensing any drug prescribed by a physician. The law also prohibits a drug store or pharmacy from employing anyone other than a licensed pharmacist to conduct the duties of a pharmacist.[94]

Persons desiring to practice pharmacy must make application to the State Board of Pharmacy by presenting sworn evidence that he has graduated from a reputable university, college or school of pharmacy, that he is at least twenty-one years of age, of good moral character, and a citizen of the United States. He must have at least one thousand hours of practical experience in a retail pharmacy under the supervision of a registered pharmacist. He also is required to pass written, oral and/or practical examinations in pharmacy and other subjects that may be regularly taught in recognized colleges of pharmacy.[95]

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[93] Ibid., p. 9.

[94] The Texas Pharmacy Law, p. 6.

[95] Ibid., pp. 7-9.

Upon completion of these requirements, he shall be registered by the Board as possessing the qualifications required, and shall receive a license to practice.[96]

Healing Arts

In the field of the healing arts, there are a number of classifications. A physician may be either a medical doctor or an osteopathic doctor. Chiropractors are authorized to treat patients in a specific manner, but are forbidden to use or prescribe medicine in the treatment of patients. Optometrists are concerned with eye care primarily through the dispensing of glasses. Naturopaths are prohibited to treat patients in any manner in the State of Texas.[97]

The issues among the various healing professions are not always clear as to the function and scope of each particular field. It is especially difficult for the average person seeking treatment to determine his needs.

For example, Texas law, with one exception, sets up the same qualifications for osteopaths as it does for medical doctors. Both must be licensed by the State Board of Medical Examiners, and both are permitted to treat patients in the same manner and are licensed to practice in hospitals. Yet, the American Medical Association members refuse to practice

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[96] Ibid.

[97] Vernon's Code of Revised Civil Statutes, Art. 4590, Repealed, 1959, XIII, 26.

if an osteopath is given permission to practice in a hospital other than one maintained by osteopaths themselves.

It is no secret that a great deal of prejudice exists within the ranks of the medical profession. With such grumblings and professional jealousies, how is a layman to conclude if such claims are based on scientific fact?

In Texas, Article 4501 specifies the qualifications for a medical doctor. He must have graduated from a recognized medical school, be of good moral character, and must have at least sixty college hours other than medical study.[98]

The law further specifies that he must be licensed to practice by the Texas State Board of Medical Examiners.[99] All applicants for license to practice in this state not otherwise licensed (foreigners for example) under the provisions of the law must successfully pass an examination by the Board of Medical Examiners.[100]

In order for an osteopath to become a licensed physician, he must meet the same specifications, except that he is graduated from a bona fide school of osteopathy.[101]

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[98]Vernon's Code of Civil Statutes, Art. 4501, XIIA, 538-539.

[99]Ibid., Art. 4498, p. 527.

[100]Ibid., Art. 4501, p. 539.

[101]Ibid., Art. 4510, p. 557.

The term chiropractor is defined in Texas law as one who employs "objective or subjective means without the use of drugs, surgery, X-ray therapy or radium therapy for the purpose of ascertaining the alignment of the vertebra . . . and adjusting the vertebra to correct any sublification . . . and charge . . . money or other compensation."[102] It is unlawful for a chiropractor to practice his trade in Texas without registering in the district clerk's office of the county wherein his office is located.[103] The certificate evidencing his right to practice is issued by the Texas Board of Chiropractic Examiners after examination by the Board. Applicants must be at least 21 years of age, of good moral character, a graduate of a first grade high school, and a graduate of a bona fide, reputable chiropractic school.[104]

Article 4544 sets up qualifications and requirements for the practice of dentistry in Texas. Applicants for a license must have graduated from a reputable dental school, be of good moral character, and be not less than 21 years of age. It is the duty of the State Board of Dental Examiners to examine all applicants for license to practice dentistry in the State of Texas.[105]

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[102] Ibid.

[103] Ibid.

[104] Ibid., Art. 4544, XIII, 100-101.

[105] Ibid.

In the field of eye care, the issues are not always clear and are not yet settled under law.

In Texas, there is currently a controversy between optometrists operating under their own name, and those practicing under a corporative name, such as Texas State Optical or Lee Optical. Also, on a national scale, there is a battle for care of the eyes between the American Medical Association and optometrists.[106]

An opthamalogist is a duly licensed physician who has specialized in eye care. He may employ the same means as the optometrist in examination of eyes for refractive error and filling prescriptions for glasses. However, being a duly licensed physician, a large part of his function is to treat the eye for disease through drugs and other methods, and to perform surgery when necessary.[107]

According to Dr. Jack Morgan, an optometrist examines eyes for refractive error, recognizes but does not treat diseases of the eye, and fills prescriptions for eyeglasses.[108] Under Texas law, the "practice of optometry is defined to be the employment of the objective or subjective means, without the use of drugs, for the purpose of ascertaining

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[106]Interview with Jack Morgan, D. O., Dallas, Texas, May 30, 1964.

[107]Ibid.

[108]Ibid.

and measuring the powers of vision of the human eye and fitting lenses of prisms to correct or remedy any defect or abnormal condition of vision.[109] The law specifically prohibits optometrists from treating eye disease or prescribing any drug or treatment whatsoever unless the optometrist is a regular licensed physician.[110]

In order for a person to qualify for license to practice optometry, he must be 21 years of age, a graduate of a reputable school of optometry, and meet any other requirements that the State Board of Optometry deems necessary.[111] The Board, at its own discretion, may refuse to issue or may cancel a license.[112]

The American Optometric Association, of which most optometrists operating under their own name are members, prohibits the use of advertising among its members, but corporative or trade name companies are doing so. The Association feels that an optometrist should be personally responsible to his patients.[113]

An opinion of the Attorney General in 1959 was to the effect that the "rules of the State Board of Optometry Examiners seeking to prevent the corporate practice of optometry and the

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[109] Vernon's Code of Civil Statutes, Art. 4552, XIII, 129.

[110] Ibid., Art. 4552, XII, 130.

[111] Ibid., Art. 4557, p. 134.

[112] Ibid., Art. 4559, pp. 136-137.

[113] Interview with Jack Morgan, D. O., Dallas, Texas, May 30, 1964.

practice of optometry under an assumed name, corporate name, trade name, or any name under which an optometrist is licensed to practice optometry are valid since such rules and regulations are not inconsistent with the statuatory provisions regulating the practice of optometry.[114]

This interpretation of the law was appealed and is now awaiting a ruling by the Supreme Court.

An optician or opthamalic dispenser is one who ordinarily fills written prescriptions of optometrists or physicians for glasses. Under the law, he may measure interpupillary distances or make facial measurements for the purpose of dispensing or adapting opthalmic prescriptions of lenses in accordance with specific directions of a written prescription.[115] However, he is prohibited from the fitting of contact lenses unless done under the supervision of a licensed optometrist or physician.[116] There are no laws in this state which specify the qualifications or professional training for opticians. Technically, anyone may legally operate as an optician.

Under Texas law, anyone may sell or merchandise glasses as long as the glasses have been selected by their customers

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[114] Vernon's Code of Civil Statutes, Art. 4552, p. 130.

[115] Ibid., Art. 4565g, p. 146.

[116] Ibid., Art. 4552, pp. 129-130.

without any aid of the merchant, either in person or indirectly, or the provision of any mechanical or eye testing machine.[117]

Nursing Homes

Presently, an estimated 350,000 Americans are in nursing homes.[118] Over 700 nursing homes are operating in Texas, with an additional 300 in the planning or building stage.[119]

With the abundance of such homes, the need for strict regulation under law is necessary to assure the public of safe and sanitary conditions, carried out by well-trained staffs. A recent national survey found that "some nursing homes are filthy, crowded and unsafe. Many are understaffed. Their residents were ill-kept, neglected, undernourished and in some cases, mistreated."[120]

In Texas, such institutions are defined as being establishments which furnish food, shelter and minor medical care, under the direction of a registered physician, to four or more persons. The law excludes hospitals, religious homes, homes furnishing only baths or massages, and homes operated by licensed chiropractors.[121]

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[117] Ibid., Art. 4565e, pp. 145-146.

[118] "Nursing Homes," Consumer Reports, XXIX, No. 1 (January, 1964), 31.

[119] Robert Mayo Tenery, "Nursing Home Accreditation," Texas State Journal of Medicine, LIX (July, 1963), 651.

[120] "Nursing Homes," op. cit., p. 31.

[121] Vernon's Code of Civil Statutes, Art. 4442C, XIIA, 284.

The State Department of Health is charged with enforcement of the law, and for purposes of inspection may enter upon the premises of all nursing homes at all reasonable hours.[122]

In order to operate in Texas, all nursing homes must receive a license from the State Department of Health, and must make application and include with the application affirmative evidence of the ability to comply with the laws. Applications for license are approved after inspection and investigation by the Department of Health. Licenses must be displayed in a conspicuous place at all times.[123]

Whenever there has been a substantial failure to comply with the law, the Department of Health may deny, suspend or revoke any license.[124]

In Texas, the Department of Health has the authority to adopt, amend, promulgate, publish and enforce minimum standards of the construction, sanitation, diets of residents, and personnel of nursing homes.[125]

The standards for construction includes plumbing, heating, lighting, ventilation and other aspects of housing conditions, and must insure the health, safety and comfort of residents.[126]

Standards for sanitary conditions include water supply, sewage, food handling and general hygiene, and must insure the health, safety and comfort of residents.[127]

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[122] Ibid., p. 285.

[123] Ibid.

[124] Ibid., p. 286.

[125] Ibid., pp. 386-387.

[126] Ibid.

[127] Ibid.

Diets are based on good nutritional standards and are related to the needs of each resident. Diets are also based on physicians recommendations related to individual residents.[128]

The State Department of Health may regulate the number and qualification of all personnel having responsibility for any part of the residents' care, including management and nursing staff.[129]

A major criticism of nursing homes in general has been that such services are inadequate for the need. One recommendation has been that a properly staffed institution should include "an R. N. around the clock, sufficient L. V. N.'s, an occupational therapist, a physical therapist, [and] a recreation director."[130]

Texas law does not specify a minimum staff requirement, leaving the decision to the State Department of Health. It is assumed that the staff needs vary according to the size of the home. Obviously, a home furnishing facilities to 250 residents would have greater staff needs than a home furnishing facilities to only ten residents.

Recently, the Texas Medical Association has announced that it will cooperate with the American Medical Association and American Nursing Home Association in accrediting nursing homes.

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[128] Ibid.

[129] Ibid.

[130] "Nursing Homes," op. cit., p. 31.

To this end, it has appointed a special committee to "look into the problems of this State, and to assist in the implementation of programs which appear to be indicated.[131]

Hospitals

For the purpose of administering the laws affecting hospitals, a Hospital Licensing Director is appointed by the Commissioner of Health. The Director must have at least five years experience and/or training in the field of hospital administration, be of good moral character, and a resident of Texas for at least three years.[132]

The Director, or any officer or agent of the State Board of Health, may enter and inspect any hospital at any reasonable hour to assure compliance with the law.[133]

Before any person or governmental unit may establish, conduct or maintain a hospital in Texas it must first obtain a license from the State Board of Health.[134] Applications for license must show evidence that there are one or more physicians on the medical staff of the hospital and that such physicians are currently licensed by the State Board of Medical Examiners. The application may contain any other information as may be reasonably required by the State Board of Health.[135]

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[131]Tenery, p. 651.

[132]Vernon's Code of Civil Statutes, Art. 4437f, XIIA, 274.

[133]Ibid., p. 277.

[134]Ibid., p. 274.

[135]Ibid., p. 275.

Local health officers or other local officials must approve the application for its compliance with city ordinances of building construction, fire prevention, and sanitation. Hospitals outside a city limit must comply with corresponding state laws.[136]

The State Board of Health may revoke or suspend, deny or cancel any license where it has found that there has been substantial failure to comply with the provisions of the law.[137]

Any person establishing, conducting, managing or operating a hospital without a license will be guilty of a misdemeaner and liable to a fine of not more than $100.00 for the first offense, and not more than $200.00 for subsequent offenses. Each day shall constitute a separate offense.[138]

Cosmetics

Cosmetic laws in Texas are contained within the Food, Drug and Cosmetic Act, and are enforced by the Commissioner of Health. He or any of his authorized agents have access to any warehouse or factory where cosmetics are manufactured or stored, or any vehicle used in the transporting of cosmetics, for the purpose of inspection.[139]

As in the case of food and drugs, agents may tag articles suspected of being adulterated or misbranded, and injunctions

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[136] Ibid.

[137] Ibid., p. 276.

[138] Ibid., p. 278.

[139] Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 34.

for correction or condemnation of such cosmetics may be sought through the county courts. Suitable written notice or warnings of minor violations may be issued by the Commissioner.[140]

A cosmetic is defined as being "(1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of such articles . . . ."[141]

"Cosmetics are a major American industry with an annual volume of $1.5 billion."[142] With the large variety of cosmetics on the market today, and the claims made by the manufacturers concerning their product, how is the consumer to know which claims are true, and which merely reflect the talents of an imaginative ad-man?

The advertising claims of almost any cosmetic product on the market today will proclaim its beautifying and youth-restoring effects on the user. "Along with the 'you-will-be-more-beautiful-if-you-use-this-product' approach, glamour in cosmetics . . . depends to a great extent on price. The more expensive a product, the more unattainable, the more glamourous it becomes."[143]

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[140] Ibid., pp. 18-21. [141] Ibid., p. 14.

[142] Ralph Lee Smith, The Health Hucksters (New York, 1960), p. 161.

[143] "Quote Without Comment," Consumer Reports, XXIX, No. 5 (May, 1964), 214.

Many cosmetics claim to remove or banish wrinkles and restore a youthful skin. However, a leading dermatologist says ". . . there is no known externally applied preparation known to medical science which will remove lines, wrinkles, etc., from the skin."[144]

In Texas, the advertising of a cosmetic in any false or misleading manner is prohibited. False advertising is considered as being all misrepresentations of a product for the purpose of inducing purchase.[145] However, evidence has shown that cosmetic manufacturers can profit from extravagant claims while the "government develops the evidence necessary to reach a sound decision" on a product.[146]

In addition to concern of valid advertising, the consumer must also consider the safety of content, sanitation and labeling of a cosmetic.

Under Texas law, a cosmetic is misbranded if:

> (a) its labeling is false or misleading in any particular; (b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer or distributor, and (2) an accurate statement of . . . content in terms of weight, measure or numerical count . . .; (c) if any . . . information required by . . . this Act to appear on the label or labeling is not prominently placed . . . and in such terms as to render it likely to be read and

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[144]Smith, p. 164.

[145]Texas Food, Drug and Cosmetic Laws, Art. 4476-5, p. 32.

[146]Smith, p. 162.

> understood by the ordinary individual under customary conditions of purchase and use; (d) if its container is so made, formed or filled as to be misleading.[147]

A cosmetic is adulterated if it contains any poisonous or deleterious substance which may render it injurious under conditions of use prescribed in the labeling or advertising, or under conditions of usual or customary use. This does not apply to coal-tar hair dyes whose label bears the warning "Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing eyelashes or eyebrows, to do so may cause blindness;"[148] and the labeling of such products must bear adequate directions for preliminary testing.

Further definition of adulteration is:

> . . . (b) if it consists wholly or in part of any filthy, putrid or decomposed substance; (c) if it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated . . . [or] rendered injurious to health; (d) if its container is decomposed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; (e) if it is not a hair dye and it contains a coal-tar color other than one certified under authority of the Federal Act.[149]

In recent years, the Food and Drug Administration has been concerned with the use of toxic coal-tar dyes in lipstick.

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[147] Texas Food, Drug and Cosmetic Laws, Art. 4476-5, pp. 31-32.

[148] Ibid.

[149] Ibid.

In 1960, fourteen coal-tar colors were tentatively banned by the Food and Drug Administration.[150] Cosmetics have not been under the heavy restrictions of safety that drugs have been, consequently, manufacturers of cosmetics have been able to market their product without first proving their safety. As a result, dangerous or potentially dangerous cosmetics have been marketed that would never have been allowed to go on sale if they had been offered as drugs. "Over the years some cosmetic manufacturers have failed to test their products carefully and the results have been distressing and sometimes disastrous."[151]

In the fall of 1964, color regulations will go into effect on the Federal level, and manufacturers of lipstick, rouge, eye-makeup, and other items will have to satisfy the F. D. A. as to their safety.[152]

Because Texas law forbids the use of coal-tar color other than specified by the Federal Act, it is assumed that the federal color regulations will also become effective in Texas.

Violation of any of the provisions of the Texas Food, Drug and Cosmetic Act will result in a misdemeanor, and carries a fine of not less than $25.00 nor more than $200.00 for the

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[150]Smith, p. 184.

[151]Ibid., pp. 182-183.

[152]"The Consumer's Observation Post," Consumer Bulletin, XL, No. 10 (October, 1963), 3.

first offense. Subsequent violations carry a penalty of not less than $100.00 nor more than $1,000.00 and/or imprisonment for not more than one year.[153]

Weights and Measures

Weights and measures very closely concern consumer protection in buying. The acts of weighing and measuring are repeated many times a day throughout our lives. The consumer is almost continually purchasing commodities by weight, measure or numerical count.[154] This is one of the most vulnerable areas in which the consumer may be defrauded. Common place facts are often taken for granted, but the accuracy of our weighing and measuring devices, or their accuracy in use cannot be assumed.[155]

Knowing that a bolt of cloth is forty yards long or that a roll of wallpaper contains sixteen yards is not enough. How is the buyer to know that in purchasing a bolt or a roll he is getting the full amount called for, or that he gets a full pound of butter or that the gasoline pump delivers a true five gallons?[156]

Still another complication is the increasing use of prepackaged foods. In the majority of food stores today, meat is

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[153] Texas Food, Drug and Cosmetic Laws, p. 19.

[154] Leland Gordon, Economics for Consumers (New York, 1961), p. 505.

[155] Ibid.

[156] Ibid., pp. 507-508.

prepackaged for sale and the weight labeled on the package. Such meats are seldom weighed at time of purchase. In instances of prepackaging, the purchaser must depend on the printed declaration on the label, unless he actually checks the weight on scales.[157] A survey conducted by the National Bureau of Standards revealed that more than 80 per cent of prepackaged foods were of short measure.[158]

Unfortunately, scales may often continue to function after they have ceased to register weights correctly, and if correct, may be used incorrectly.[159]

In Texas the laws pertaining to the regulation of weights and measures are enforced by the Weights and Measures Division of the Department of Agriculture. The Commissioner of Agriculture has the power and authority to enforce or cause enforcement of the weights and measures laws. He shall appoint a Chief Deputy of Weights and Measures and additional deputies from time to time to serve as sealers as may be provided by appropriation.[160] County sealers and deputies may be appointed by the County Commissioner Court. Those appointed by the court have the same duties and responsibilities as those conferred upon State sealers.[161] All sealers on all levels are given the

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[157] Ibid.

[158] "Quote Without Comment," Consumer Reports, XXVIII, No. 5 (May, 1963), 206.

[159] Gordon, p. 507.

[160] Texas Weights and Measures Law, p. 1.

[161] Ibid., p. 4.

same power as peace officers in matters pertinent to weights and measures laws for the purpose of enforcing the law.[162]

Among the general duties performed by sealers and deputies is the inspection and testing of all weighing and measuring devices for accuracy. These devices include scales, gasoline pumps, vehicle tanks, liquid and dry measures, water, gas and electric meters. Deputies are also responsible for the check weighing and measuring of package merchandise for the purpose of ascertaining that full weight and measure is contained therein.[163]

Every person, firm or corporation using or keeping for use or offering for sale, devices for weighing and measuring must have them inspected and marked correct by the sealer before they may be used, sold or kept for use or sale.[164] The devices, by law, must be inspected at least once a year and the inspectors also have the power to weigh and measure packages or amount of commodities regardless of kind for the purpose of sale.[165]

Whenever a device for weighing or measuring is found to be incorrect and beyond repair upon inspection, it is condemned and seized by the authority making the inspection. However, if

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[162] Ibid., p. 2.

[163] Ibid., Foreword.

[164] Ibid., p. 9.

[165] Ibid., pp. 10-11.

the device is susceptible to repair, it is to be marked with a tag bearing the words "Out of Order." The owner has thirty days in which to make repair, but cannot use or dispose of the device until it is corrected and has been re-inspected and ascertained to be correct by the inspecting authority.[166]

The standard of weights and measures in Texas are those used by the government of the United States.[167]

Specifically, these standards are as follows:

1. The unit of measure of capacity is the standard gallon. A barrel consists of thirty-one and one-half gallons. Two barrels equal one hogshead. All other measures of capacity for liquids are derived from the standard gallon by continued division by two, as to make half gallon, quarts, pints and gills. Liquid commodities must be sold by liquid measure, except for immediate consumption on premises, or where there exists a general consumer usage to express the quantity by weight, provided that such statement be accurate as to quantity.[168]

2. Standards of weight per bushel are specified when certain commodities are sold by the bushel, and no special agreement as to the measurement of the weights is reached. For example, barley is specified to be forty-eight pounds.[169]

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[166] Ibid., pp. 11-12.

[167] Ibid., p. 14.

[168] Ibid., pp. 15, 28.

[169] Ibid., p. 16.

3. Standards for solids are the peck, the half-peck and quarter-peck, all derived from the half bushel by successively dividing by two. The standard bushel contains 2,150.42 cubic inches. The law specifies that in measuring dry commodities, they must not be heaped, but will be straight level with the top of the container.[170]

The law specifies that non-liquid commodities shall be sold only by measure of length weight or numerical count. However, exceptions to this specification are that fruits, vegetables and other dry commodities may be sold by the standard barrel or other methods provided for by law, and that berries and small fruits may be sold in boxes, and when customary, fruits and vegetables may be sold by the head or bunch.[171]

Commodities sold in package form must bear the net quantity of content in terms of weight, measure or numerical count, along with the name and place of business of the manufacturer, packer or distributor. Such statements must be placed plainly and conspicuously on the outside of the package. Reasonable variations and tolerances, and exemptions to small packages and packages sold on premises where packed will be made by the Commissioner.[172]

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[170] Ibid., pp. 15-16.

[171] Ibid., p. 28.

[172] Ibid., p. 29.

Containers for packaged commodities cannot be made, formed, filled or wrapped to be misleading as to content; or to be so filled as to fall below the standard prescribed by law. Reasonable tolerances and variations shall be established through regulations made by the Commissioner.[173]

The law also forbids the misrepresentation of the price of a commodity, thing or service. Whenever an advertisement displaying a price includes a whole number and a fraction, the figures in the fraction shall be of proportionate size and legibility with those in the whole number.[174]

Standards for specific commodities have established that cheese, meat or meat products are sold by standard weight. Poultry dressed or killed prior to the time of sale shall be sold by net weight at the time of sale and not by live weight or by pieces. Milk or cream shall be sold only in containers of capacity for liquid; to wit, the gallon, a multiple of the gallon, one-half gallon, quart, pint, and gill. Butter, processed butter or oleomargarine may be sold only by the one quarter pound or four ounces net; one half pound or eight ounces net; one full pound or sixteen ounces net; one and one-half pound or twenty-four ounces net weight.[175]

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[173] Ibid., p. 30.

[174] Ibid., p. 32.

[175] Ibid., pp. 31, 38.

The standard measures of flour and corn meal, except such cereal sold as grits, shall be packaged by net avoirdupois weight of two, five, ten, twenty-five, fifty, one hundred, one hundred-fifty, and two hundred pounds.[176]

Bread to be sold by the loaf shall be sold based on only the following: a loaf weighing one pound, sixteen ounces; a loaf weighing one and one-half pounds, or twenty-four ounces; and loaves weighing two pounds, or thirty-two ounces; or loaves of three pounds or some other multiple of one pound, or sixteen ounces.[177]

Textile materials shall be stated in terms of linear measure, except where there exists a definite trade custom otherwise.[178]

Commodities sold on the basis of weight shall not employ any other than net weight.[179]

Reasonable variations and tolerances of the above specific standards are allowed under law. For example, bread has a tolerance of one ounce per pound over or under the standard.[180] Other tolerances are established by regulations by the Commissioner of Agriculture.[181]

Obviously, the intent of the law in designing such exact standards is to render the weight and measure of a commodity

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[176] Ibid., p. 21.
[177] Ibid., pp. 44-45.
[178] Ibid., p. 33.
[179] Ibid., pp. 31-32.
[180] Ibid., p. 45.
[181] Ibid., p. 3.

easily read and understood by the consumer. The law prohibits the misuse of weights and measures in misleading manners. For example, if a package contains one quart liquid, the statement must be "one quart liquid" and not "two pints liquid," or "thirty-two ounces liquid."[182]

In 1956, a comprehensive survey of state legislation, made by a noted authority on weights and measures laws, disclosed "a surprising disparity in laws and enforcement."[183] While some states do not have weights and measures laws, other states have adopted good laws which compare with the Model Law recommended by the National Conference on Weights and Measures.[184] Texas laws appear to have been patterned after the Model Law.

For example, the Model Law specified that commodities in liquid form shall be sold by liquid measure and weight; commodities in non-liquid form shall be sold only by weight, measure or numerical count; that where a whole number and fraction are used in price, the fraction will be of proportionate size to the whole number; that meats, breads, butter, oleomargarine, milk and flour will be sold by specific standards; and a statement of net content and manufacturers name will appear

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[182] Ibid., p. 35.

[183] Gordon, pp. 509-510.

[184] Ibid., p. 510.

on prepackaged foods.[185] Comparable laws have been found in the Texas Weights and Measures Laws.

However, the Model Law also prohibits the use of such terms as "jumbo," "giant," or "full" when referring to a unit of measurement.[186] A survey of the Texas laws has not revealed a comparable law.

The penalties set out by the Model Law are fine and imprisonment, ". . . but the fines are small and imprisonment rare."[187] This was one of the criticisms of the Model Law.[188] In Texas, the penalty for violation of the weights and measures laws result in a misdemeanor and is punishable by a fine of not less than $20.00 nor more than $100.00 for the first offense, and from $50.00 to $200.00 for subsequent offenses.[189] In some instances, for violation of specific articles of the law, the minimum fine is as small as $10.00. No penalty of imprisonment was found to be specified in the law.[190]

Many violators of the weights and measures laws were found to be chronic offenders, "who consider a small fine simply as an added cost of operation which can be recovered before noon the next day."[191]

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[185]Gordon, pp. 510-511.

[186]Ibid., p. 510.

[187]Ibid., p. 511.

[188]Ibid.

[189]Texas Weights and Measures Laws, p. 39.

[190]Ibid., p. 4.

[191]Gordon, p. 511.

Public Facilities and Services

Public Accommodations

The consumer may often take advantage of the public accommodations available for use. In his leisure time, he may visit public eating establishments or other places of entertainment or recreation. During his vacation, or perhaps through necessity, he may stay overnight in a hotel or motel. In Texas, there are specific laws governing specific areas of public accommodation, their safety and sanitation.

Restaurants.--The consumer has a natural interest in whether or not his food is sanitarily prepared, and his utensils kept in a sanitary condition, free of disease.

Laws regulating public eating places prohibit the employing of any person who is infected with an transmissable condition of any disease known to be communicable through the handling of food or drink.[192]

In addition, any person engaged in the handling of food and drink must maintain personal cleanliness. He must wear clean outer garments, and keep his hands clean at all times.[193]

All dishes and utensils must be thoroughly washed after each use in warm water containing soap or alkali cleanser.

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[192]Texas Food, Drug and Cosmetic Laws, Art. 705D, p. 66.

[193]Ibid.

After cleansing, the article must be sterilized by placing in clear water heated to 170°, and shall remain immersed for at least three minutes. Chlorine solution or other chemical methods approved by the State Health Officer may be used in sterilization.[194]

No chipped, cracked or broken dishes or utensils may be used in any public eating or drinking establishment.[195]

The law further provides that napkins, or cloth, must be laundered or sterilized after each use, and napkins, straws, toothpicks, or other articles must be kept securely protected from dirt, dust, insects, rodents, and all contaminations.[196]

No article used in eating or drinking may be offered for use that has been cleaned or polished by means of cyanide or other poisonous substance, unless the article has been subsequently cleaned in such a manner that all traces of poisonous substance have been removed.[197]

Enforcement for the provisions of the law lie with the State Health Officer, and for purposes of inspection he or any of his assistants may enter into any place where food is sold.[198]

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[194] Ibid., p. 63.

[195] Ibid., p. 64.

[196] Ibid.

[197] Ibid., p. 65.

[198] Ibid., p. 1.

Violations of any of the provisions set out above will result in a fine of not less than $5.00 nor more than $100.00.[199]

Motels and hotels.--In selecting hotel or motel accommodations, the consumer is primarily interested in the appearance and sanitation of the establishment.

Inspection of hotels and motels is the responsibility of the State Board of Health. For purposes of inspection, authorized agents of the Board may enter, examine and investigate the premises of any establishment for the discovery and suppression of disease, and enforcement of the rules of sanitation, and any health law of the State.[200]

Texas law requires that any tourist court, hotel, inn or rooming house provide a safe and ample water supply, and samples must be submitted at least once a year to the Department of Health for bacteriological analysis.[201]

Each establishment must be equipped with an approved system of sewage disposal maintained in a sanitary condition. In addition, all sanitary appliances must be kept in good repair, rooms must be properly ventilated, and facilities for keeping the entire area in a sanitary condition must be provided.[202]

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[199] Ibid., p. 65.

[200] Vernon's Code of Civil Statutes, Art. 4420, XIIA, 239.

[201] Ibid., Art. 4477-1, XIIA, 408-409.

[202] Ibid.

Clean and sanitary towels, sheets and pillow cases must be provided, and each unit must be thoroughly cleaned each time before being rented or furnished to any person.[203]

Any establishment failing to conform to the provisions of the law will be declared a nuisance.[204] Upon receipt of evidence of a nuisance, the local health officer in whose jurisdiction the nuisance is located will issue a written notice ordering abatement. If the notice is not complied with within a reasonable specified time, the local district attorney, upon notification by the health officer, will institute proceedings for abatement.[205]

In addition, the law requires that a card or sign be posted in each room showing the rate per day of each room. The card must also bear the date posted, and no advance in price may be made prior to thirty days from the date posted.[206]

Failure to post rates, or knowingly charging an amount in excess of the posted rate will result in a fine of not less than $25.00 nor more than $100.00 and/or imprisonment for not less than thirty days. Each day that such excessive amount is charged constitutes a separate offense.[207]

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[203] Ibid.

[204] Ibid.

[205] Ibid., p. 402.

[206] Vernon's Penal Code, Art. 1552, III, 599.

[207] Ibid.

Public swimming pools.--Safety and sanitation are the primary concern of the consumer when public swimming pools are considered.

To help protect the public from possible infection, the law provides that throughout the period of use, every public swimming pool must maintain residual chlorine from 0.2 to 0.5 parts per million units of water. Other methods of disinfection approved by the State Department of Health may be used. No water shall ever be permitted to show an acid reaction to a standard pH test.[208]

All parts of any public bath house must be kept in a sanitary condition at all times. Facilities for adequate protection against sputum contamination must be provided.[209]

The law requires that rest rooms be provided that are adequate and properly approved. In addition, all dressing rooms must be equipped with showers.[210]

All bathing suits and towels furnished by any person must be thoroughly washed with soap and hot water, and thoroughly rinsed and dried after each use.[211]

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[207] Ibid.

[208] Vernon's Code of Civil Statutes, Art. 4477, XIIA, 407.

[209] Ibid.

[210] Ibid.

[211] Ibid.

No person known or suspected of being infected with any transmissible condition of a communicable disease will be allowed into the pool.[212]

The construction and appliance of all public pools shall be as to reduce to a practical minimum any possibility of drowning or injury to bathers.[213]

Penalty for violation of the provisions of the law will result in a fine of not less than $10.00 nor more than $200.00. Each day constitutes a separate offense.[214]

Miscellaneous.--In addition to the laws governing the specific areas outlined above, general laws exist that are of interest to the consumer.

The laws require that all public buildings, theaters, and bus stations provide and maintain sanitary toilet accommodations.[215]

All drinking water for public use must be free from deleterious matter, and must comply with the standards established by the State Department of Health. No drinking water may be served except in sanitary containers or other sanitary medium.[216]

Texas law further provides that every house of accommodation for transient guests, theaters, public places of amusement, hall or place used for public gathering having a

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[212] Ibid. [213] Ibid. [214] Ibid.

[215] Ibid., p. 403. [216] Ibid., p. 404.

lot area in excess of 5,000 square feet, must provide an additional fire escape for each 5,000 square feet of such excess or fraction thereof if such fraction exceeds 2,000 square feet.[217]

Barber and beauty shops.--It is common knowledge that men visit a barber shop on the average of once every two weeks, and that women visit beauty shops as often as once a week. These establishments and the services they offer are generally taken for granted by the public, and very little thought is given to the legal requirements imposed upon the shop and employees.

Basic laws governing both barber shops and beauty shops require that the owner, manager or operator of a shop register his full name and the location of the shop with the State Board of Health. Any change of name or location of the shop must also be registered.[218]

It is unlawful for the owner, manager or operator of any barber shop or beauty shop to knowingly employ a person with a communicable disease or venereal disease.[219]

All furniture, tools, appliances and other equipment used in shops must be kept in clean condition. All combs, hair

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[217]Vernon's Code of Civil Statutes, Art. 3963, XII, 275.

[218]Vernon's Penal Code, Art. 729, II, 134.

[219]Ibid., Art. 731, p. 135.

brushes, hair dusters, and similar articles must be washed thoroughly at least once a day and be kept clean at all times. Mugs, shaving brushes, razors, shears, scissors, clippers and tweezers must be sterilized at least once after each use. Sterilization is obtained by immersing the article specified in boiling water for at least one minute or a 5 per cent aqueous solution of carbolic acid for at least ten minutes.[220]

The law forbids the use of any of the above articles for the service of a customer unless they comply with the sanitary requirements of the law. Towels and washcloths must be boiled or laundered after each use. Powder puffs, sponges, head rests, and finger bowls must be replaced after each use. Before servicing a customer, an operator must thoroughly cleanse his hands.[221]

It is unlawful to practice barbering without a certificate of registration issued by the Board of Barber Examiners.[222] In order to qualify as a registered barber, the applicant must be at least eighteen years of age, have practiced as an assistant barber for at least eighteen months, and have successfully passed an examination to determine fitness.[223] To qualify as an assistant barber, the applicant must be at least sixteen

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[220] Ibid., pp. 135-136. [221] Ibid.

[222] Ibid., Art. 734A, I, 137.

[223] Ibid., p. 139.

years of age, have graduated from an approved school of barbering and have satisfactorily passed an examination to determine fitness. It is unlawful to practice as an assistant barber without a certificate of registration issued by the Board of Barber Examiners, and assistant barbers may practice only under the immediate personal supervision of a registered barber.[224]

Certificates of registration as registered barbers or assistant barbers must be displayed near the chair where the licensed person practices.[225]

Under the law, barbering is defined as trimming the beard or cutting the hair, giving facial or scalp massages; applying oils, creams, lotions or other preparations by hand or electrical equipment; singeing, shampooing, or dyeing the hair or applying hair tonics; or applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or that part of the body above the shoulders.[226]

Permits to practice as a hairdresser or cosmotologist are issued by the State Board of Hairdressers and Cosmetologists. Applicants must be at least sixteen years of age, a graduate of a licensed beauty culture school, and must pass an examination given by the Board and including subjects usually taught in a beauty culture school.[227]

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[224] Ibid., p. 140.

[225] Ibid.

[226] Ibid., p. 138.

[227] Ibid., p. 157.

It is unlawful to practice as a hairdresser or cosmetologist without obtaining such a license, and such license must be prominently placed at all times at the place of business.[228]

Hairdressing and cosmetology are defined as the use of cosmetological preparations, antiseptics, tonics, lotions or creams, engaging in or performing any one of a combination of the following: cleansing, beautifying or performing any work on the scalp, face, neck, arms, bust or upper part of the body, or manicuring the nails, or arranging, dressing, curling, bleaching, coloring or similar work on the hair.[229]

Penalties for the violation of any of the provisions set out above results in a fine of not less than $25.00 nor more than $100.00.[230]

Transportation

Our modern economy would soon grind to a halt without the service of our transportation system. The recent maneuvering of President Johnson to halt a threatened railroad strike on a national level is an explicit example of the concern for a continuous flow of public carriers.

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[228] Ibid., p. 156.

[229] Ibid., Art. 734B, pp. 155-56.

[230] Ibid., p. 167.

In Texas, the Railroad Commission is the regulatory authority for motor buses, express companies, and railroads. As such, the Commission has the power to establish and fix all necessary rates or charges.[231]

All common carriers, except railroads, must transport goods upon receipt of customary freight rates, if such goods are of a kind usually carried, and are presented at a reasonable time, and provided that the carrier has ample facilities to carry the goods safely.[232]

A bill of lading must be given, on demand, stating the quantity, character, order and condition of the goods, and carriers must deliver the goods in like order.[233] All goods stored in warehouses or depots on route to delivery are the responsibility of the carrier, and the carrier is liable for loss or damage to goods.[234]

If a carrier agrees to ship animals, such animals must be properly fed and watered during the time of conveyance.[235]

Goods must be shipped in order of receipt with no preference to one or another. The first received is the first shipped.[236]

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[231] Vernon's Code of Civil Statutes, Art. 911a, II, 646; Art. 3861, XII, 205; Art. 6445, XVIII, 338-339.

[232] Ibid., Art. 884, III, 570. [233] Ibid., Art. 885, pp. 571-572.

[234] Ibid., Art. 886, p. 602. [235] Ibid., Art. 889, p. 612.

[236] Ibid., Art. 888, p. 606.

Unclaimed baggage or freight may be sold at public auction after three months. Notice of auction must be posted thirty days prior to sale.[237]

All railroad and express companies are required to keep and maintain a general office in the State of Texas, and must retain all books, papers and accounts for inspection by the Railroad Commission.[238]

Railroads must run at regular intervals fixed by public notice, and must furnish sufficient facilities for the transporting of passengers and property.[239] Railroads are liable for damages to the aggrieved party if passengers or property are refused service at the regular appointed time.[240]

Depots and passenger houses are required to be kept warmed and lighted, and are to be open to the public at all times.[241] Reasonably clean and sanitary water closets must be maintained for passengers.[242]

Damages suffered to passengers or property may be recovered by law by the injured party, i. e., failure on the part of the

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[237] Ibid., Art. 900, p. 621.

[238] Ibid., Art. 3864, XII, 206; Art. 6275, XVIII, 9; Art. 6283, XVIII, 14.

[239] Ibid., Art. 6357, XVIII, 75.

[240] Ibid., Art. 6360, p. 77.

[241] Ibid., Art. 6395, p. 106.

[242] Ibid., Art. 6396, p. 109.

carrier to deliver goods, or failure on the part of the carrier to deliver a bill of lading.[243]

It is unlawful to charge a rate in excess of one approved and authorized by the Railroad Commission. Violations will result in a fine of not less than $100.00 nor more than $5,000.00 for each offense.[244]

Public Utilities

The basic premise supporting American capitalism has been that of the private enterprise system, which assumes that the search for profits would guarantee the consumer, through competition, the highest quality goods and service at the lowest possible price.

However, one section of the economy in which competition is not feasible is that of public utilities.[245] This being the case, the general public must have protection under the law to guarantee reasonable rates and adequate services.[246]

Texas is one of the few states which still leaves the regulation of utilities to local authorities.[247]

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[243] Ibid., Arts. 884-885, II, 570-572.

[244] Ibid., Art. 6473, XVIII, 367; Art. 3863, XII, 205.

[245] James N. Morgan, Consumer Economics (New York, 1955), p. 343.

[246] James C. Bonbright, Public Utility Rates (New York, 1961), preface.

[247] Martin G. Glaeser, Public Utilities in American Capitalism (New York, 1957), pp. 115-116.

The governing body of all towns and cities has the power to regulate, by ordinance or by charter, the rates and compensations charged by utility companies enjoying a franchise in said city,[248] city owned public utilities,[249] or companies using the streets and public grounds. Rates and compensations must not yield more than a fair return for fair value of property or property used, and in no event shall exceed 8 per cent per annum.[250]

For the purpose of this study, public utilities are meant to include gas, water, and light and power companies.

The Railroad Commission is the regulatory authority for transporting, producing, distributing, buying, selling and delivering gas by such pipelines in this State. The Commission shall establish and enforce the adequate and reasonable price of gas.[251]

Whenever a city government orders an existing rate reduced, the gas utility affected may appeal to the Railroad Commission to review the order. The Commission will set a date of hearing and will make an order of decision as may be just and reasonable.[252]

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[248] Vernon's Code of Civil Statutes, Art. 1123, IIA, 678.

[249] Ibid., Art. 1124, p. 679.

[250] Ibid., Art. 1119, p. 665.

[251] Ibid., Art. 6053, XVIB, 618-619.

[252] Ibid., Art. 6058, pp. 626-627.

Whenever a company desires to make a change in a rate fixed by a city government, it must make application for change to the city government where the company is located.[253]

The law requires that every gas utility must have an office in a county where its property or some part of its property is located, and keep all books, accounts, papers, records and other articles required by the Railroad Commission.[254]

All companies handling or distributing odorless gas, natural or butane, must add a malodorous agent to indicate the presence of such. The malodorant must be non-toxic and non-corrosive.[255]

All meters, water, gas or electric, are subject at all times to inspection by the Commissioner of Agriculture. The use of any meter found to be defective will be discontinued until the meter is corrected.[256] It is unlawful to divert any meter, or to knowingly misread any meter.[257] Penalty for violation of the above will be a fine of not less than $25,00 nor more than $100.00.[258]

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[253] Ibid.

[254] Ibid., Art. 6052, p. 617.

[255] Ibid., Art. 6053, pp. 618-619.

[256] Department of Agriculture, Texas Weights and Measures Laws (Austin, 1963), p. 42.

[257] Ibid., pp. 42-43.

[258] Ibid., pp. 42-44.

Public health laws provide for a clean and safe water supply by requiring that any water system supplying drinking water to 25,000 or more persons must have the water tested for sanitary quality at least once daily and furnish monthly reports to the State Health Department. Water plants supplying less than 25,000 persons must submit four samples of water per month to the Department of Health for bacteriological analysis.[259]

Underground water supplies must not be established in places subject to possible polution by flood waters, and clear water reservoirs must be covered to prevent entrance of dust, insects or surface seepage. All plants are required by law to conform to good public health engineering practices.[260]

Every public utility requiring a deposit of its customers must pay 6 per cent per annum payable on January 1. When the service is discontinued, the deposit and any unpaid interest must be returned to the depositor.[261]

The continuous service of public utilities is absolutely essential to public health and safety. It is unlawful to picket any utility plant or premises or willfully disrupt the service or maintenance of any electric, gas or water utility. Willful interruption or stoppage of service is considered a public calamity and cannot be endured.[262]

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[259] Vernon's Code of Civil Statutes, Art. 4477-1, XIIA, 405.

[260] Ibid.

[261] Ibid., Art. 1440, III, 645.

[262] Ibid., Art. 1446A, 647.

The law does not specify that telephones are essential to public health and safety, and does not provide for laws prohibiting picketing or the stoppage of service. However, the general laws governing the establishment or rates by city governments, and the interest rate paid on deposits of customers, may be applied to telephone companies.

Insurance

Stringent and comprehensive laws are needed to protect the consumer when buying insurance.

> As is true of many other purchases the consumer makes, he usually knows much less about the thing he is buying in an insurance contract than does the seller. The seller not only knows the exact meaning of every term, both technically and legally, but he also can measure the anticipated gain or loss and consequently has a definite standard by which to determine his commitments. The individual buyer, on the other hand, cannot even understand all of the terms used by insurance salesmen; he knows little or nothing about the law of insurance; and he has no standard of profit or loss to guide him in his buying. In short, the seller is a specialist, while the buyer is an amateur.[263]

Another problem that the insurance buyer has faced has been the inability of insurance companies to meet their obligations. During the depression of the 1930's, twenty of 350 life insurance comapnies in the United States went bankrupt. None of these were among the very large companies.[264] However, without present day laws, fraudulent and promotional practices,

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[263]Leland J. Gordon, Economics for Consumers (New York, 1961), p. 378.

[264]Allen L. Mayerson, Introduction to Insurance (New York, 1961), p. 33.

inadequate capital and reserves, and speculative investments would cost the policyholder an appreciable amount, if one is to conclude from history.

Even recently, between 1954 and 1958 some twenty-three Texas companies were put into receivership.

> As an aftermath, the 54th Legislature passed sixteen separate insurance bills, having for their purpose the increasing of the amount of capital and surplus required, especially of newly formed Texas companies; granting the administrative body more control over the capital and surplus; and withholding and issuing of certificate of authority for doing business, and strengthening the examination of insurance companies in this State.[265]

The primary interest of the insurance study in this investigation is to examine the Texas Insurance Code in reference to regulation and enforcement affecting the financial strength of insurance companies, the specifications relating to rates, policy contracts and the competence and reliability of individuals who sell insurance.

Insurance is a kind of business which almost from its inception has been regulated by government. The constitution of 1876, which is still the constitution in use in Texas today, made provisions for the office of Insurance Commissioner, Statistics and History.[266]

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[265] Vernon's Code of Civil Statutes, Insurance Code, XIV, 15.

[266] Dallas Morning News, April 26, 1964, Insurance Section, p. 1.

In Texas the basic laws for governing insurance are found in the Texas Insurance Code. Responsibility for enforcing the laws rest with the State Board of Insurance. The Board consists of three members appointed by the Governor and each member must meet certain requirements. He must be a citizen of Texas, and have at least ten years of successful business, professional or governmental activities.[267]

The Board operates and functions as a unit and a majority vote of the members is necessary to transact any of its official business. The specific duties of the Board are to determine policy, rules, rates and appeals.[268]

Generally, the duties of the State Board of Insurance are primarily that of a supervisory capacity, while the actual carrying out and administering the details of the Insurance Code are the primary responsibility of the Insurance Commissioner.[269]

The Commissioner, appointed by the Board of Insurance, ". . . shall be chief executive and administrative officer, and shall be charged with the primary responsibility of administering, enforcing and carrying out the provisions of the Insurance Code under the supervision of the Board."[270]

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[267] Vernon's Code of Civil Statutes, Art. 1.02, XIV, 54.

[268] Ibid. [269] Ibid., Art. 1.04, p. 59.

[270] Ibid., Art. 1.09, pp. 68-69.

For the purpose of enforcing the insurance laws, the Insurance Commissioner appoints such deputies, assistants and other personnel as are necessary. He has the authority to examine, either in person or through his examiners, the books and papers of all agents or companies throughout the State.[271] Presently, there are about fifty specialized accountants who are used constantly by the Commissioner for the purpose of examining and auditing the financial condition of every insurance company who holds a license to do business in Texas. The Commissioner, by constantly auditing and examining the insurer, can generally detect signs of failure well in advance, so that losses to policyholders are minimized.[272]

A concise statement of the condition of each company or agency visited or examined is kept on file, and under the law, the Board may suspend the entire business of any company of the State of Texas, or the business within the State of any other company during its non-compliance with any provision of the laws relative to insurance.[273]

Before any company can do business in Texas, it must receive a certificate of authority from the State Board of Insurance. In considering an application for certificate, the

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[271] Ibid., Art. 1.17, p. 88.

[272] Dallas Morning News, April 26, 1964, Insurance Section, p. 1.

[273] Vernon's Code of Civil Statutes, Art. 1.10, XIV, 72-73.

Board shall inquire into the competence and reputation of the officers and directors of the company, and must ascertain that minimum capital requirements and surplus required by law have been deposited by the company. If the Board is satisfied that the company has, in all respects, complied with the law, a certificate of authority is granted.[274]

The law further requires that the financial conditions of each new company be examined once every six months for its first three years of operation, once a year for the fourth through the sixth year, and thereafter every two years or more often if necessary. Whenever the Board finds that any condition or requirement prescribed by law for granting a certificate of authority no longer exists, it may revoke or modify such certificate.[275]

In practically all lines of insurance the State Insurance Commissioner must approve the form of the contract, commonly called the policy. Of particular interest to the Commissioner, in approving or disapproving policies, is whether or not the policies are misleading, deceptive or contrary to law.[276]

In life insurance, the law ascertains that specific statements be contained within each policy. There are several

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[274] Ibid., Art. 1.14, p. 79.

[275] Ibid., Art. 1.15, pp. 82-83.

[276] Ibid., Art. 3.42, p. 197.

specifications required by law of particular interest to the protection to the policyholder. One of these provisions is the "Law of Incontestability," meaning that if the policyholder made any false statement on the insurance application, the insuring company has no recourse after two years from the date the contract becomes effective. Among the other important provisions of a protective nature which must be contained in each life insurance contract are: (1) a thirty-day grace period, meaning that the policyholder has thirty days from the time the premium is due before the policy is lapsed; (2) the policy and application shall constitute the entire contract; (3) a table showing in figures the cash value and options available under the policy each year, upon default in premium payments during the first twenty years of the policy, or for the period in which premiums are payable; (4) if the policy is in any part an endowment policy, meaning any type of life policy other than pure term, and the policy is defaulted after it has been in force for three years, it must contain provisions for three options--(a) taking the cash value of the policy within a limited period of time, (b) taking extended term insurance for a limited time for the full amount of the policy, (c) or taking a specified smaller amount of paid up life insurance.[277]

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[277] Ibid., Art. 3.44, pp. 201-203.

The law also provides that accident and health insurance contain certain specifications within the policy as to grace period, waiting periods, and limitations.[278]

Article 5.35 applies to policy provisions of fire insurance policies and allied lines. All policies among such companies must be uniform in order to receive approval by the Board.[279] The same also applies to automobile and other types of casualty insurance.[280]

As discussed earlier, the intangible nature of insurance in conjunction with the lack of buying knowledge by the purchaser, makes the control of rates charged by insurance companies an important regulatory factor as far as the consumer is concerned.

Automobile insurance, fire insurance, and most other kinds of property-casualty coverage are sold in Texas at rates prescribed by the Insurance Board. "Texas law in this respect is unique, as in other states these premium rates are established by the insurance companies and then presented to the state regulatory agencies for approval or rejection."[281]

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[278]Ibid., Art. 3.70-2, p. 314.

[279]Ibid., Art. 5.35, p. 374.

[280]Ibid., Art. 5.06, p. 346.

[281]Dallas Morning News, April 26, 1964, Insurance Section, p. 1.

Article 5.01 provides that each insurance company selling automobile insurance must submit a report each year to the Board showing the premiums and losses in each classification of motor vehicle risk written in this state.[282]

In determining the classification of risk, Article 5.01 further provides that the Board consider the hazards and experience of individual classifications of risks, past and prospective.[283] For example, a 1.A risk would be where

> . . . there is no male operator under 25 years of age, the automobile is not used for business and the automobile is not driven to or from work . . . . A 2.C, for which a higher rate would be charged, would be where there is a male operator under 25 years of age, and he is unmarried and is the owner or principal operator of the automobile.[284]

Though maximum rates are set for other types of property-casualty insurance and fire insurance, these later mentioned type companies may file for a deviated rate if their loss ratio has been low. With the approval of the Board they may then charge less than the rates promulgated by the Board.[285]

Since the decision concerning rates set by the Board are based upon the actual ratio between premiums collected and losses paid out, the setting of rates appear to be fair and equitable.

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[282] Vernon's Code of Civil Statutes, Art. 5.01, XIV, 340.

[283] Ibid.

[284] Texas Board of Insurance, Texas Agent's License Quiz (Dallas, 1962), p. 27.

[285] Vernon's Code of Civil Statutes, Art. 5.25, XIV, 363, 365.

Even though rates are set by law, there is still a degree of price competition in the fire and casualty fields. Participating policies of mutual companies may pay dividends from their reserves with approval from the Board.[286] Also, stock companies may pay a dividend to policyholders in the form of profit sharing at the expiration date of the policy.[287]

There are no laws governing rates charged by companies engaged in life, health and accident insurance. The price is fixed by each company and the consensus is that very strong competition among such companies tends to push the price down.[288]

As heretofore mentioned, the most sweeping insurance legislation in Texas in modern times was passed by the 54th Legislature in 1955. For the purpose of further examining the adequacy of such regulations as it pertains to consumers, this examination has referred to a comprehensive study of the adequacy of the laws passed during that session of the Legislature. This study was made up of Senators and Representatives of the State Legislature and other members of the State government at the request of the Investigating Committee of the House of Representatives.[289]

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[286] Ibid., Art. 5.07, p. 348.

[287] Ibid., Art. 5.08, p. 349.

[288] Dallas Morning News, April 26, 1964, Insurance Section, p. 1.

[289] A Review of the Adequacy of Insurance Legislation Enacted by the 54th Legislature (Austin, 1956), n. p.

The consensus among the committeemen and their advisors was that legislation was adequate in the major problem areas. Those laws passed of special interest to this examination were: (1) the board organization and procedure, (2) examination of insurance companies, (3) minimum capital and surplus requirements, and (4) agents licensing.[290]

Board organizations and procedure, and examination of insurance companies have been discussed in detail and nothing further needs to be added, except to reiterate that legislation was believed adequate. In reference to number three, capital and surplus requirements for new companies have been discussed in conjunction with forming of new companies. These requirements were substantially increased for all type companies, except title, and surety and trust.[291] "Companies other than life in existence prior to the effective date of the new laws were required to bring their capital structure up to the new requirements within ten years. Life companies were not required to meet the new requirements."[292] The consensus of members of the Board was that minimum capital requirements were then generally adequate. "One member, however, . . . expressed the view that further increases are desirable."[293] There has not, however, been any further increases.

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[290] Ibid.

[291] Ibid.

[292] Ibid.

[293] Ibid.

As to the licensing of insurance agents, the 55th Legislature passed legislation requiring that salesmen for all legal reserve life insurance companies pass an examination as a prerequisite to licensing. The main purpose of this examination is to insure that the agent has an adequate knowledge of life insurance and that he understands the provisions of the State Insurance Code that pertains to him.[294]

Agents for fire and casualty insurance companies must also pass a similar examination. Legislation requiring the examination of fire and casualty agents has been on the statutes since 1941. Article 21.14 specifies that each agent must pass an examination of general knowledge pertaining to fire and casualty insurance prior to licensing.[295]

A license to sell life or fire and casualty insurance may be refused if the Insurance Commission has reason to believe that the applicant is unethical or not of good moral character. The Commissioner also is authorized to cancel any agent's license if the agent has violated any provision of the Insurance Laws.[296]

Insurance is generally regarded as the second largest industry in Texas[297] and the conclusion is reached that the Texas

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[294]Texas Legislative Council, The Small Loan Business in Texas (Austin, 1958), p. 3.

[295]Texas State Board of Insurance, Texas Agent's Licensing Quiz (Dallas, 1962), p. 3.

[296]Ibid., p. 8.

[297]Dallas Morning News, April 26, 1964, Insurance Section, p. 1.

Insurance Code is broad and comprehensive and that the existing statutes prevent fraud and promote stability among the insurance companies doing business in Texas.

One newspaper article states that "Texas is generally considered to be near the top in efficiency of insurance regulation."[298] The consensus of the Texas Legislative Council further brings this out. However, in view of the fact that the seller is a specialist while the buyer is an amateur, it would probably be impossible to prescribe laws that would solve all of the problems involved in buying a technically worded insurance policy.

Securities

"Fewer areas of the American economy are as completely regulated as the securities market."[299] However, this has not always been true. Until the market crash in 1929, the attitude in securities was "let the buyer beware."[300] An investigation by a Senate committee, as a result of the crash, made it clear that the conditions existing in the securities market at that time made it difficult to avoid losses.[301] As an aftermath to

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[298] Ibid.

[299] Allen D. Choka, Introduction to Securities Regulation (Chicago, 1958), p. 1.

[300] Ibid.

[301] Leland Gordon, Economics for Consumers (New York, 1961), p. 439.

the market crash, numerous series of laws were passed to remedy the many abuses found in securities.

The purpose of the laws regulating the sale of securities in Texas has been to protect the individual from losses through the purchase of worthless securities sold by dishonest persons.[302]

In 1923, the Texas legislature passed the Blue Sky Law of Texas which extended the scope of legislation to include stocks, bonds, debentures and other securities. Stock was redefined to include stocks of all corporations. Previous to 1923, legislation had extended only to the sale of corporation stock and required only that the dealers acquire a permit to sell.[303]

The Blue Sky Law was repealed in 1935, and the Securities Act was adopted. The most important changes were "the inclusion of any instrument representing any interest in or under an oil, gas or mining lease, fee or title . . .," and the requirement for registration of dealers and salesmen.[304]

In 1941, an amendment to the Act gave the purchaser the right to rescind the sale and recover all considerations paid, plus interest, within two years from the time of sale, if the sale of the securities was in violation of the Securities Act.[305]

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[302]Vernon's Code of Civil Statutes, II, xiii.

[303]Ibid., pp. xiii-xiv.

[304]Ibid., p. xiv.

[305]Ibid., p. xv.

The Securities Act has two basic requirements: (1) the registration of securities to be sold, obtaining thereby a permit for their sale, and (2) the registration of dealers in securities and their salesmen.[306]

The definition of securities is very broad. Not only is there a specific listing of the most common types of securities, but also a residuary clause including "any other" instrument commonly known as a security, whether similar to those listed or not.[307]

"The inclusion of any certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title is an important provision, not generally found in securities act . . . ."[308]

The first interpretation of the Act concerning oil and gas leases found such to be securities when the court upheld the conviction for selling such without registering as a dealer.[309]

The law defines a security dealer to include every person or company, other than salesmen, who engage in selling, offering for sale or dealing in any other manner in any security or securities.[310]

In order to register as a dealer in securities, the applicant is required to file with the Secretary of State, a

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[306] Ibid., p. xvi.

[307] Ibid., pp. 4-5.

[308] Ibid., p. xvi.

[309] Ibid., pp. xvi-xvii.

[310] Ibid., p. 5.

sworn statement giving previous history, record, associations and present financial condition. The application must be approved by the Secretary of State who uses as a primary basis of approval the evidence of "good business repute."[311]

Salesmen of securities are defined as including every company or person employed by a dealer to offer for sale or to sell securities.[312]

Requirements for registering as a salesman are similar to the requirements for registering as a dealer, except that the salesman's application and information pertaining to the salesman must be sworn to by the applicant and certified to be true by the dealer who employs him.[313] Good business repute is the primary factor considered when approving the application.[314]

The use of the fact of registration by public display or advertisement, or in connection with any sale, is prohibited except where provided for in law.[315]

When filing for the registration of securities, the law requires that a detailed statement of the financial condition of the insurer, and a detailed profit and loss statement covering the last three years of operation of the issuer must be filed with the Secretary of State.[316]

The total of all organization expenses and all commissions paid to salesmen must not exceed 20 per cent of the total amount

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[311] Ibid., p. 14.
[312] Ibid., p. 5.
[313] Ibid., p. 14.
[314] Ibid.
[315] Ibid.
[316] Ibid.

of capital sought to be employed in such proposed company.[317] Obviously, the reason for this is to prevent the inflation of stock values through exorbitant commission charges.

In the approval of registration of securities, the Secretary of State bases his decision upon two findings: (1) that the proposed plan of business appears to be fair, just and equitable, and (2) that the securities which the applicant proposes to issue the methods used to issue are not such as will work a fraud upon the purchaser.[318]

Any security listed and approved by the Securities Exchange Commission of the United States, guaranteed by the United States government or other state or municipal governments, national bank securities, railroad and public utility stock, or securities listed on the New York, Chicago or Boston Stock Exchanges may be sold without registration.[319]

The Secretary of State is charged with the enforcement of the Securities Act and it is his duty to see that its provisions are at all times obeyed.[320]

The Secretary of State has the power to grant permits for registration to dealers and salesmen, and registration of securities. He has the power to revoke or suspend previously issued permits to sell securities when he finds that further

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[317] Vernon's Code of Civil Statutes, II, 14.

[318] Ibid.

[319] Ibid., pp. 19-22.

[320] Ibid., p. 30.

sale would be in violation of the Act, or would tend to work a fraud on the public.[321] A list of revoked securities is published, and further sale of such securities is forbidden.[322]

The license of any dealer or salesman may be revoked, after due notice and hearing, when the Secretary of State has reason to believe that the Securities Act has been violated.[323] However, revocation of license is rare, the threat of such action is usually sufficient.[324]

All advertising materials, circulars, pamphlets, prospectus, programs or other like material used by registered salesmen and dealers must be submitted to the Secretary of State. The use of any misleading or false advertising will result in the revocation of license.[325]

When the Secretary of State has reason to believe that the Securities Act has been violated, constituting a fraudulent practice in the sale of securities, he may request the Attorney General to bring action in the name of the State of Texas.[326]

The selling, offering for sale, or dealing in securities in any manner without being duly licensed, or the selling of any unregistered security, or any fraudulent practice concerning securities, will result in a felony. The fine will be not more than $1,000.00 or two years imprisonment, or both fine and imprisonment.[327]

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[321] Ibid., pp. 22-23.

[322] Ibid.

[323] Ibid., pp. 23-24.

[324] Ibid., p. xxxiv.

[325] Ibid., pp. 19-22.

[326] Ibid., p. 28.

[327] Ibid., pp. 26-27.

Banks

It is common knowledge that one of the most important services which banks perform for the general public is the holding of demand deposits.

In the United States, hardly a year passed prior to 1934 without dozens and even hundreds of bank failures. Direct losses to depositors between 1921 and 1933 are estimated in excess of $7,000,000,000.[328]

Beginning with 1933, much needed federal legislation was passed that extended initially only to national banks.[329]

The problem of bank failures has now long been solved. In 1943, the Texas Legislature passed stringent and comprehensive laws for the purpose of insuring the financial solvency and stability of state banks.

Article 3 of the Banking Code establishes a Finance Committee composed of nine members. Each member is appointed by the Governor and must meet certain professional qualifications. Six of these members comprise the Banking Section. Their main function is to serve as an advisory board to the Banking Commissioner, and to make a thorough and intensive study of the Texas banking statutes with a view to strengthening said statutes, as to attain and

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[328]Leland J. Pritchard, Money and Banking (Cambridge, 1958), p. 309.

[329]Ibid., p. 310.

maintain the maximum degree of protection to depositors. The Banking Section shall report every two years to the Legislature.[330]

Other functions of the commission pertaining to banks are (1) promulgating general rules and regulations not inconsistent with the statutes of the state, and from time to time amend the rules for the general purpose of preventing state banks from concentrating an excessive portion of their resources in any particular type of investment to maintain bank solvency, (2) providing adequate fidelity coverage or insurance on officers and employees of state banks, and fire, burglary, robbery and other casualty coverage for state banks so as to prevent loss through theft or casualty, and (3) providing for the preservation of the books and records of the Banking Department and of the state banks so long as they are of value.[331]

For the purpose of enforcing the Act, a Commissioner of Banking is appointed by the Finance Committee. His primary duty is to supervise and regulate all state banks as provided for by the Code.[332]

A Deputy Commissioner, departmental examiners, bank examiners, and assistant bank examiners are appointed by the Commissioner of Banking for the purpose of carrying out the Banking Code.[333]

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[330] The Texas Banking Code of 1943 (Austin, 1963), p. 2.

[331] Ibid., p. 6.

[332] Ibid., p. 9.

[333] Ibid., pp. 9-10.

Article 8 requires the Commissioner, or his assistants, to examine each state bank twice each year, or more often if additional examinations are deemed necessary to safeguard the interest of depositors and creditors. The Commissioner and all examiners have the authority to administer oaths and examine any person upon any subject he deems pertinent to the financial condition of any state bank.[334]

In order to incorporate a state bank, an application for charter must be filed with the Commissioner. The application must contain (1) the location of the proposed bank, (2) the name of the bank, (3) the capital and denomination and number of shares, (4) the name and address of each subscriber for stock and the number of shares subscribed for by him, and (5) the number of directors.[335]

In considering any application, the State Banking Board shall, after hearing, determine whether or not: (1) a public necessity exists for the proposed bank; (2) the proposed capital structure is adequate; (3) the volume of business in the community where such proposed bank is to be established is such as to indicate profitable operation of the proposed bank; (4) the proposed officers and directors have sufficient banking experience, ability and standing to render success of the proposed bank profitable; and, (5) the applicants are acting in good faith.[336]

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[334] Ibid., pp. 13-14.

[335] Ibid., pp. 17-18.

[336] Ibid., p. 19.

A charter to do business is granted if the Commissioner is satisfied that the above conditions have been met.

Requirements for minimum capital stock vary with the population of the city where the bank is domiciled. For example, a city of 6,000 population or less would be required to have $50,000 as minimum capital, a city of from 25,000 to 50,000. would be required to have at least $100,000. as minimum capital, and a city of over 50,000 population would be required to have at least $200,000 as minimum capital.[337]

Specific restrictions as to the types of loans and investments in which banks are allowed to engage are specified in Chapter V of the Banking Code. Among the most important of these provisions are:

1. A limit of 50 per cent on the amount of capital and certified surplus that may be invested in the domicile, including land and building.

2. Real estate may not be acquired by a bank, other than its domicile, except for satisfaction of indebtedness.

3. The total amount of any loan on all real estate must not exceed 60 per cent to 80 per cent of the appraised value of the real estate, depending on the type.

4. No bank is permitted to invest its funds in trade or commerce by buying and selling goods or merchandise, or by owning or operating an industrial plant, except when necessary to avoid loss on a loan or investment previously made in good faith.

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[337] Ibid., p. 17.

5. No bank may permit any one person or corporation to become indebted to it for an amount in excess of 25 per cent of its capital and certified surplus.[338]

Although Texas banking laws perform many necessary regulatory functions, protection of the depositors in most state banks does not end with state legislation.

"In 1933, the inauguration of deposit insurance by the Federal Deposit Insurance Corporation further extended the supervisory powers of agencies of the federal government over the nation's banks."[339] Although deposit insurance is voluntary for state banks, they must subscribe to membership in the F. D. I. C. as a part of belonging to the Federal Reserve System. Another apparent inducement to subscribe is that the state banks competitive position is improved by membership.[340]

Under this system, each individual deposit is insured up to a maximum of $10,000.00 in the case of bank failure.

Presently, there are 572 state banks in Texas, and all but five of them participate in the F. D. I. C.[341]

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[338] Ibid., pp. 32-37.

[339] Pritchard, p. 315.

[340] Interview with Jack Mays, vice president, Greenville State Bank, Dallas, Texas, June 10, 1964.

[341] Interview with G. M. Focke, assistant supervising examiner, Federal Deposit Insurance Corporation, Dallas, Texas, July 6, 1964.

A check with the Deputy Banking Commissioner revealed that there have been five state bank failures within the past ten years, each of which was liquidated by the F. D. I. C.[342]

Small Loan Companies

As seen in Chapter I, many problems have faced the consumer when acquiring credit. Generally, the major problem facing the consumer when dealing with small loan companies has been in excessive high rates of interest charged.

Prior to 1960, the Texas Constitution stipulated that a rate of 10 per cent per annum was the maximum rate of interest that could be charged under the law. However, in 1951, the 52nd Legislature enacted Article 1524a-1, and for the first time gave small lenders the specific authority to use the certificate plan of operation.[343] The certificate plan did not affect the maximum rates of interest allowed under the Constitution, but certain provisions of this Act gave loan companies the right to make charges other than for interest. One of these provisions gave loan companies the right to "charge for necessary expenses incurred in connection with making the loan."[344] The constitutionality of the Act was upheld in court

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[342]Letter from H. L. Bengston, Deputy Banking Commissioner, Austin, Texas, June 17, 1964.

[343]Texas Legislative Council, The Small Loan Business in Texas (Austin, 1958), p. 5.

[344]Ibid.

in 1951 in the case of Steiner v. Community Finance and Thrift Corporation. As a result, the national small loan chains moved into Texas en masse and opened a great number of offices.[345] In 1958, Texas was referred to as the "leading loan shark state."[346]

In 1960, the Texas Constitution was amended, giving the legislature the "authority to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest."[347] However, the constitutional amendment further stipulated that in the absence of specific regulation maximum rates of interest above 10 per cent would be usurious.

After much controversy, the Texas Regulatory Loan Act was passed by the 58th Legislature in 1963. This Act excludes banks, credit unions, and other institutions extending credit, and pertains specifically to those small loan companies making loans up to $1,500.00.[348]

For the purpose of enforcing the new Act, an office of Regulatory Loan Commissioner was created. The Commissioner is appointed by the Texas Finance Commission and is subject to the Commission's orders and directions. His primary duty is to administer and enforce the regulations within the Small Loan Act.[349]

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[345] Ibid.

[346] Wallace P. Mors, Small Loan Laws (Cleveland, 1958), pp. 20-22.

[347] Vernon's Texas Constitution, Art. 16, p. 7.

[348] Texas Regulatory Loan Act (Austin, 1963), p. 4.

[349] Ibid., p. 3.

The Regulatory Loan Commissioner is designated to appoint a deputy commissioner, and such examiners and assistant examiners as may be required to carry out the provisions of the Act, and such other employees as may be necessary to maintain and operate the office of Loan Commissioner.[350]

A check with the present and first Regulatory Loan Commissioner, Francis A. Miskell, found that his office now has some fifteen examiners, and that at full strength will probably have twenty-five examiners. Presently, this staff is charged with examining approximately 1,700 licensees.[351]

Each small loan company is required to keep books, records and files for examination by the Commissioner, or his duly authorized representative. All loans, transactions, books, accounts, papers, and correspondence of each loan company must be examined at least once a year. If, upon examination, it is found that any licensee has knowingly or without due care, violated any provision of the Act, the Commissioner, after notice and hearing may suspend or revoke the violator's license to do business.[352]

Under the Act, any person who wishes to operate a small loan company in Texas must file an application for license with

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[350] Ibid.

[351] Letter from Francis A. Miskell, Regulatory Loan Commissioner, Austin, Texas, June 18, 1964.

[352] Texas Regulatory Loan Act, p. 10.

the Loan Commissioner. When making application, the applicant must pay $200.00 as an investigational fee and $100.00 as a license fee. Issuance or denial of a license depends upon the financial responsibility, character, experience and general fitness of the licensee.[353]

When a license is granted, it must at all times be displayed at the place of business.[354]

Maximum rates of interest allowed under the law vary greatly with the size of the loan. It should be noted that under the new law, no further charges may be made in the form of expenses for handling the loan or other reasons.[355] Following is a schedule of maximum rates which may be charged under the law:

1. Very small loans--For a loan of (a) up to $19.00, $1.00 per $5.00 for one month only; (b) $19.00 to $35.00, 1/10 of amount of loan plus $3.00 per month up to two months; (c) $35.00 to $70.00, 1/10 of the amount of the loan plus $3.50 per month for a period of four months; and (d) $70.00 to $100.00, 1/10 of the loan plus $4.00 per month up to six months.[356]

2. Loans from $100.00 to $1,500.00--Maximum charges allowed per annum for a loan of (a) $100.00, $19.00 could be charged; (b) $100.00 to $200.00, $16.00 for that portion of the loan above $200.00; (c) $200.00 to $300.00, $13.00 for that portion of the loan above $200.00; (d) $300.00 to $500.00, $11.00 for that portion

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[353] Ibid., pp. 5-6.

[354] Ibid., p. 7.

[355] Ibid., p. 13.

[356] Ibid., p. 14.

of the loan above $300.00; (e) $500.00 to $1,000.00, $9.00 per $100.00 for that portion of the loan above $500.00; and (f) $1,000.00 to $1,500.00, $7.00 per $100.00 for that amount of the loan over $1,000.00.[357]

In terms of both dollar costs and interest, the charges vary sizably with the amount of the loan. For example, on a $20.00 loan, the maximum charges for two months would be $8.00. In terms of interest, this would be approximately 240 per cent per annum. On a $90.00 loan, the maximum allowed charges for six months, to be paid in six equal installments, would be $33.00, equaling an annual rate of approximately 65 per cent. A look at maximum charges on a $400.00 loan shows that the charge could be as much as $59.00, equal to an annual rate of interest of approximately 27 per cent. On a $1,000.00 loan, the maximum allowable charge would be $115.00, equaling an annual rate of approximately 21 per cent.

Quite obviously, maximum rates allowed to be charged by loan companies for loans of $100.00 to $1,500.00 are much higher than those rates ordinarily charged by banks, credit unions and other types of loan institutions. For those loans of less than $100.00, rates appear to be extremely high.

In determining the fairness of such rates, two important factors should be considered:

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[357] Ibid., pp. 11-12.

1. The cost of making small loans is the most expensive of all types of loans, mainly because of the large amount of paper work, accounting and record keeping required to handle such loans. It costs practically as much to make a $100.00 loan as it does to make a $1,000.00 loan, yet the return on the $1,000.00 loan is ten times as great as the return on the $100.00 loan at a given interest rate.

2. Rates that are too low tend to cause legitimate lenders to leave the state. The vacuum thus created is filled by "loan sharks."[358]

One expert on the subject is of the opinion that the maximum rates allowed by the State of Ohio are approximately the lowest rates possible that will induce legitimate loan companies to remain in the business.[359] A look at the maximum rates allowed under the Ohio small loan law in comparison with those in Texas should give some idea as to how fair and equitable Texas laws are.[360]

In Ohio, 3 per cent interest per month may be charged on loans of up to $150.00.[361] On a $120.00 loan for one year to be repaid in twelve installments, plus monthly interest per installment, a charge of $23.40 or 35 per cent per annum would be allowable. In Texas, the maximum charges for an identical loan, with

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[358]Gordon, p. 295. [359]Ibid.

[360]Even though this comparison appears as a criticism of the Texas law, in all fairness it should be stated that Ohio law does allow for additional charges where Texas does not. The extent of the charges was not investigated. However, Ohio law does state that specific charges for actual and necessary expenses are allowed.

[361]Texas Legislative Council, op. cit., p. 97.

the exception of payments being in twelve equal installments, would be $22.80 or approximately 35 per cent. Here there is no appreciable difference.

However, on a loan of over $300.00, under Ohio law, a maximum charge of 2/3 per cent per month is allowed.[362] On a $600.00 loan for one year, the maximum rate that could be charged would be 8 per cent per annum, for a total amount of $26.51. In Texas, an identical loan would yield the loaner $79.00 or an annual interest rate of approximately 24 per cent.

As seen above, the maximum rate permissible on a $1,000.00 loan in Texas would be $115.00 for an annual rate of approximately 21 per cent, whereas in Ohio, the maximum charge would be $46.00 or 8 per cent.

The difference in the maximum allowable rates permissible in the two states are even larger on the very small loan. For example, on a $40.00 loan in Texas, to be repaid in four equal monthly installments, the loan company could charge as much as $18.00 equaling approximately 142 per cent, whereas in Ohio, the maximum charge at 3 per cent per month would be $3.00 or 36 per cent interest.[363]

A further comparison between maximum allowable rates under Texas law and those allowed by other states with small loan laws will give further emphasis to the excessiveness of interest

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[362] Ibid.

[363] Ibid.

charges allowed under the new Texas law.[364] On a $90.00 loan repayable in six equal monthly installments, a Texas loan company could charge an annual interest rate of 65 per cent. The states allowing the next highest interest rate would be New Mexico and Wyoming, which would allow a maximum rate of 3½ per cent per month, or 42 per cent annually. Of the 36 other states having effective small loan laws, twenty-four of them would have allowed maximum rates of lesser amounts for the same type loan.[365]

Further comparison on a larger loan shows that on a $500.00 loan, the maximum rate that could be charged under Texas law would be approximately 26 per cent per annum, or $70.00. In the other 36 states, maximum interest charges on a $500.00 loan were: (1) two states would allow maximum rates of 2 per cent per month equal to 24 per cent per annum; (2) two states would allow maximum charges of 1½ per cent per month, or 18 per cent per annum; (3) ten states would allow a charge of 1 per cent per month, or 12 per cent per annum; (4) eleven states set the maximum at less than 1 per cent per month ranging to a low of ½ of 1 per cent per month, or 6 per cent per annum allowed in New Jersey; (5) small loan laws in eleven states do not pertain to loans of as much as $500.00.[366]

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[364]The data used in making the comparison between Texas and other states was not explicit as to whether or not additional charges, other than interest rates, were allowed.

[365]Texas Legislative Council, op. cit., pp. 97-98.

[366]Ibid.

Excessive interest rates have not been the only abuses common to the small loan industry. A further study of Texas laws of a protective nature to the consumer are as follows: Section 18 of the small loan act governs the selling of life, health and accident insurance as additional security. Under the law, rates must not be more than the maximum amount allowed by the Insurance Code of Texas governing maximum premiums to be charged for credit life, health and accident insurance. In no case, may the loaner charge more than the actual amount charged by the insurer, and the amount of insurance must not exceed the amount of indebtedness at any time during the loan and must not be written for over one month beyond the term of the contract.[367]

When tangible property is offered as security for a loan in excess of $300.00, the loaner may require that insurance be purchased on such property. The selling of such insurance is also regulated by the laws within the Insurance Code of Texas.[368]

Section 15 pertains to advertising, and states that " . . . false, misleading, or deceptive statements or representation with regard to the rates, terms or conditions for loans are prohibited."[369]

Regulations pertaining to advertising promulgated by the Loan Commissioner specify that such phrases as "easy payments,"

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[367] Texas Regulatory Loan Act, pp. 18-19.

[368] Ibid., pp. 19-20.

[369] Ibid., p. 11.

"lowest costs," or "quickest service" are prohibited and are considered misleading.[370] Further regulations as to advertising specify that loan companies must not identify themselves in "blind" loan advertising solely by a phone listing or newspaper box number. Also prohibited is the sending out of letters of credit or credit cards unless to a person who has applied for credit from the sender.[371]

Other practices from which a company is prohibited are: (1) taking any instrument in which blanks are left to be filled in after loan is made, (2) taking real estate as security for a loan, (3) taking any promise to pay which does not include amount of cash advanced, the time the loan was made, the schedule of payments, the maturity date, the amount of authorized charges, and the types of insurance, if any insurance is included with the loan, and (4) using physical injury to recover an unpaid amount of a loan.[372]

Section 22 prohibits the assignment of wages for the purpose of securing loans made under this act.[373]

To conclude, it can be assumed that the Texas Regulatory Loan Act has provided the borrower with much needed legislation.

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[370]Regulatory Loan Commissioner, Regulation II (Austin, 1964), p. 2.

[371]Ibid.

[372]Texas Regulatory Loan Act, p. 17.

[373]Ibid., p. 18.

However, the implication of the comparison between maximum rates of interest allowed in Texas with the maximum rates of interest allowed in other states leads to the conclusion that maximum interest rates allowed in Texas are of an excessive amount.

CHAPTER III

SUMMARY, EVALUATION AND RECOMMENDATIONS

Summary

The primary purpose of this study has been to investigate the need for consumer protective legislation and to examine the laws of Texas to determine how well the consumer is protected by State law in his spending activities. To do this, it has been necessary to examine consumer protective laws by type and category, as well as to give some attention to current trends and expressed needs in the field of consumer protection.

To say that the consumer laws are completely adequate in any given area of consumer spending would be erroneous. However, there are areas where legislation appears to be broad and comprehensive. The Weights and Measures Laws, for example, have wide scope, and when compared to the Model Law, were found to be similar.

Explicit within this study are several major areas where the need for additional legislation is indicated. Specific recommendations for additional legislation will be made in regard to the major problem areas.

Evaluation

Food

Legislation is inadequate in several categories of food production and marketing, and no legislation was found pertaining

to the major problem in the marketing of frozen foods. Once food is frozen and then thawed it deteriorates rapidly causing food spoilage.[1] The possibility of this occurring between the time the food is first frozen and the time it is purchased by the consumer does exist. The consumer, when purchasing frozen foods, has no way of knowing the condition of the food at the time of purchase. Specific legislation governing the transporting and storage of frozen foods is needed.

Several criticisms exist within the laws concerning the labeling and grading of various types of foods.

1. No grade is specified by law for canned goods. Legislation requiring meaningful labeling of canned goods in regard to grades would be helpful to the consumer.

2. Fancy and choice and other vague terms used in the grading of fresh fruits and vegetables are too confusing and too general. Additional laws should be passed requiring clear and more accurate descriptive terms to be used in the grading of fresh fruits and vegetables.

3. Insufficient laws governing the labeling of certain dairy products are apparent, considering the many types of creams, such as Coffee Cream, Whipping Cream and Half and Half, which appear on the market. Legislation is needed requiring that dairy products list butterfat content on all types of creams.

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[1]Willis A. Gartner and others, The Principles of Food Freezing (New York, 1958), p. 108.

The possible dangers arising from the accumulative consumption of foods containing harmful preservatives and additives have been pointed out. Though Texas law presently governs the amounts of such additives that can be used in foods, further study is needed, and possibly additional legislation should be passed governing food additives.

Cosmetics

The two major problems indicated in the field of cosmetics are false advertising and safety. Many cosmetic products claim a youth restoring effect, but the medical profession is of the opinion that there is no known external preparation that will remove or banish wrinkles from the skin. Although false advertising of cosmetics is expressly forbidden by Texas statutes, it has been pointed out that cosmetic manufacturers can profit from extravagant claims while the government develops the necessary evidence for a sound decision. Two types of legislation are needed to provide additional protection against such practices: (1) stiffer penalties should be provided against violators, and (2) authority should be given to the Department of Health to issue temporary restraining orders against allegedly fraudulent or misleading advertising.

Cosmetics, unlike drugs, are not required to be tested as to their safety before they are put on the market. Hormones and certain other types of drug-like preparations that can be sold only by prescriptions as drugs are used in many types of cosmetic

products. Legislation requiring that cosmetics be tested and proven safe to the Texas Department of Health before marketing would be in the public interest.

Household Items

One criticism of federal law, as seen in Chapter I, was that the scope of the law does not include many commonly used household products. Among these products are detergents, soap, household cleaners, soap pads, scouring pads, glue, bleaches and fabric cleaners. Many of these products may be harmful if swallowed, sniffed or, in some rare cases, even touched. The same criticism may be applied to the Texas law, since this investigation has not revealed that these products are covered by Texas law. Legislation should be extended to these products with primary emphasis on their safety.

Credit Legislation

The significance of legislation to protect the consumer in borrowing and buying on time was pointed out in Chapter I.

In the study of small loan laws, the only major fault found within the Texas Regulatory Loan Act was that maximum rates of interest allowed appear to be excessive when compared with other states. Much has been done in the new law to rectify other common credit abuses in the small loan area.

However, the small loan act specifically exempts other types of financial institutions, and pertains specifically to

loans ranging up to $1,500.00. For those lending agencies not affected by the small loan law, nothing has been found within the Texas statutes to prevent excessive charges from being added to a loan in the form of carrying charge or costs of handling. Legislation is needed in this area to bring all types of lending agencies within the context of the law.

Further opportunity for credit abuse lies in the court interpretation which holds that installment sales are not covered by usury laws or small loan legislation, since the extension of credit by a retailer is an integral part of the sale of merchandise, and not a loan of money.[2] The first states to deal with this situation enacted legislation in 1935, designed to control retail installments and selling and financing. Increasing abuses resulted in regulatory laws in thirty states by 1961.[3]

Specific legislation pertaining to retail credit and installment buying should be enacted in Texas.

No thorough investigation of the enforcement of Texas laws was made, since the primary concern of this study has been the legalities of consumer legislation. However, within the limited study of enforcement, the conclusion is reached that very light penalties are provided for violators. In most instances, the penalty provided is a small fine; in some instances an additional

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[2]Leland Gordon, Economics for Consumers (New York, 1961), p. 296.

[3]Ibid.

penalty of imprisonment is provided. However, as was pointed out specifically in the information on the Weights and Measures Law, chronic violators accept the fines as business costs which can be regained the next day.

Recommendations

If the purpose of penalties is to be of a preventive nature, then there appears to be a need for stiffer penalties for violation of consumer protection laws. A thorough study should be made by the Texas Legislative Council to determine the sufficiency of existing penalties under the law within all categories of this investigation.

Another factor of enforcement provisions of consumer protection laws is the question of providing sufficient funds for the necessary personnel. The regulatory authority governing specific laws is usually given the authority under law to appoint additional personnel as may be necessary for enforcement of the law. Obviously, in order to employ a well-trained staff in sufficient number, a department must have adequate financial appropriations. (Information developed in the study indicates that this has not been the case in all instances in Texas.) The study of banking, insurance, and small loan companies indicated that sufficient appropriations for enforcement were available, while in the study of securities it was found that eventhough the Secretary of State is given the authority to appoint personnel

to enforce the Act, "funds have not been provided . . . ."[4] Obviously, this is a situation that needs to be corrected.

One other factor worthy of attention in any study of consumer protection laws is the matter of consumer education. The primary purpose of consumer education is to teach the consumer how to buy economically. However, proper consumer education can make the public aware of the need for consumer protection laws. In a democracy, laws are passed when voters demand them, and adequate laws to aid the consumer in protection against fraud and in making a rational choice between and among various products will evolve only as the consumer becomes aware of the need for such legislation.

Much has been said in this study of the current problems in consumer protection. With the many complex new products on the market today, it is difficult for the consumer to make a rational choice. In the words of the late President Kennedy, "the march of technology has increased the difficulties of the consumer along with his opportunities."[5] The President further emphasized that since three fourths of all spending in the economy is by consumers, it is just as important to help the consumer make the best possible use of his income as it is to increase his income.

If the market economy is to function properly, the consumer must be protected against undue exploitation.

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[4]Vernon's Code of Civil Statutes, II, xvii.

[5]House Document No. 364, Consumers' Protection and Interest Program, Message from the President of the United States to Congress, May, 1962.

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