

LEXISNEXIS TEXAS DESKTOP CODE SERIES

# TEXAS ANNOTATED CIVIL PRACTICE AND REMEDIES CODE

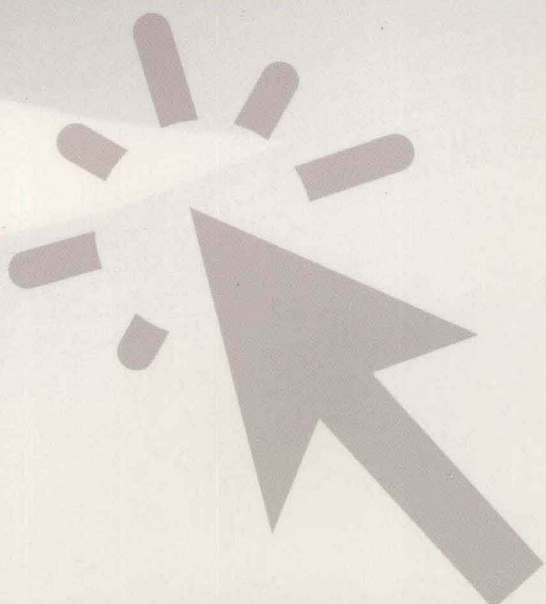
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2005 EDITION

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**TEXAS ANNOTATED CIVIL  
PRACTICE  
AND REMEDIES CODE**

**With Texas Civil Practice  
and Remedies Code  
and Related Texas Codes**

**2005 EDITION**

**With statutory amendments through  
the 79th Legislature Second  
Called Session, 2005.**



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Jaime Morris, J.D. .... 1-800-446-3410 Ext. 7721

Wanda Anderson, Sr. Ed. .... 1-800-446-3410 Ext. 7537

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Editorial Offices

744 Broad Street, Newark, NJ 07102 (973) 820-2000

201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200

701 E. Water St., Charlottesville, VA 22902 (434) 972-7600

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## ***Preface***

The Texas Annotated Civil Practice and Remedies Code is a one-stop reference for civil litigators. This volume includes the entire Civil Practice and Remedies Code, featuring selected annotations to cases of interest. In addition, this volume contains provisions from the Texas Constitution and eleven other Texas codes to assist with every aspect of civil litigation. The statutory text is further augmented with limited historical citations to assist the user in tracking recent developments in the law.

The annotations in this volume have been specially selected. They are from recent cases that have been evaluated by Shepard's Citations Service and assigned a letter to indicate that case's treatment of the statute addressed by the court. The list of Shepard's letters used to gather the case notes in this volume appears below.

ff	.....	statute cited as controlling
ii	.....	statute interpreted in a significant way
na	.....	statute is inapplicable
rt	.....	current version of statute applied retroactively
C	.....	statute is constitutional
U	.....	statute is unconstitutional
Up	.....	statute is unconstitutional in part
V	.....	statute is void or invalid
Va	.....	statute is valid
Vp	.....	statute is void or invalid in part

It is important to note that because this volume contains only selected case annotations, it should be used only as part of a total research regimen. Additional research should include the study of other related statutes, which are fully annotated on [lexis.com](http://lexis.com). A user's guide, designed to help you find the pertinent statutes, cases and additional annotations online, can be found on page viii.

To provide further ease of use, a detailed substantive index appears at the end of the book.

# Texas Online Annotated Statutes at Lexis.com

## USER'S GUIDE

Lexis.com features complete online coverage of Texas statutes, with all the codes plus the Texas Revised Civil Statutes. The Texas Online Annotated Statutes also feature complete case annotations, which have been reviewed by the editorial staff. Shepard's tabs are available throughout to enable you to track the subsequent history of both cases and statutes.

All these resources can be searched using natural language queries or queries in the terms and connectors format. In addition, it's possible to pull up a single statute or opinion using its citation. Code sections would appear with all their case annotations. This guide describes quick and useful online search methods in more detail.

- First, log in at *www.lexis.com*.

### To locate a code section using its citation

- Select **Get a Document** from the navigation bar at the top of the screen.
- To find a case, enter its citation. For code sections, refer to the list of search terms on page viii and enter the appropriate code section number. For example, "tex civ prac 16.003" for Tex. Civ. Prac. & Rem. Code Ann. § 16.003.
- Press **Get**.

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*What efforts has the fast food industry made to use recyclable packages?*

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*recycle package fast food*

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1. **Identify the topic:**

*Information about efforts in the fast food industry to use recyclable packaging.*

2. **Choose your search words.** The words should reflect ideas essential to your research topic. Include alternative words and avoid words that are too general. For example, to find articles about efforts in the fast food industry to use recyclable packaging, you might use these words:

*recycle package container fast food*

3. **Truncate** and **Wildcard** search words.

- **Truncate “!”** Finds a root word and all the words based on it. *E.g., recycl! finds recycling, recycle, recyclable.*
- **Wildcard “\*”** Holds a space for any character within a word. *E.g., bernst\*\*n finds both the ei and ie spellings of the name.*

4. **Link the search words** in a search request using connectors. Connectors such as OR, AND, W/# (where # is the number of words between terms linked by this connector), and so on define relationships between your search words.

5. Specify date restriction, if necessary.

Once you’ve decided on your search request, you can run the search.

*Recyc! W/25 fast food W/10 container OR package*

finds documents where either “container” or “package” is in the same sentence as “fast food”, and “fast food” is in the same paragraph as “recycle” (or its variants).

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BUSINESS ORGANIZATIONS CODE.....	tex bus org xx
CIVIL PRAC AND REMEDIES CODE.....	tex civ prac xx
CIVIL STATUTES .....	tex rev xx*
CODE OF CRIMINAL PROCEDURE .....	tex crim proc xx
EDUCATION CODE .....	tex educ xx
ELECTION CODE .....	tex elex xx
FAMILY CODE .....	tex fam xx
FINANCE CODE .....	tex fin xx
GOVERNMENT CODE .....	tex govt xx
HEALTH AND SAFETY CODE.....	tex health xx
HUMAN RESOURCES CODE.....	tex hum res xx
INSURANCE CODE .....	tex ins xx <b>OR</b> tex ins code art xx
LABOR CODE .....	tex lab xx
LOCAL GOVERNMENT CODE .....	tex loc govt xx
NATURAL RESOURCES CODE.....	tex nat res xx
OCCUPATIONS CODE .....	tex occ xx
PARKS AND WILDLIFE CODE.....	tex parks xx
PENAL CODE .....	tex penal xx
PROBATE CODE .....	tex prob xx
PROPERTY CODE .....	tex prop xx
SPECIAL DISTRICT LOCAL LAWS CODE .....	tex spec dist xx
TAX CODE.....	tex tax xx
TRANSPORTATION CODE.....	tex transp xx
UTILITIES CODE .....	tex util xx
WATER CODE.....	tex water xx

\*(where xx is the section number)

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# Civil Practice and Remedies Code

## TITLE 1

### GENERAL PROVISIONS

#### Chapter

##### 1. General Provisions

##### 2-4. [Reserved]

#### CHAPTER 1

##### General Provisions

###### Sec.

###### 1.001. Purpose of Code.

###### 1.002. Construction of Code.

###### Sec.

###### 1.003. Internal References.

#### **Sec. 1.001. Purpose of Code.**

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 323, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

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

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

#### **Sec. 1.002. Construction of Code.**

The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

#### **Sec. 1.003. Internal References.**

In this code:

- (1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and
- (2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a

reference to a unit of the next larger unit of this code in which the reference appears.

**CHAPTERS 2-4 [Reserved]**

## **TITLE 2**

### **TRIAL, JUDGMENT, AND APPEAL**

#### Subtitle A. General Provisions

##### Chapter

5. Rule of Decision
6. Governmental Exemption from Bond and Security Requirements
7. Liability of Court Officers
8. State Exemption from Certain Fees: Fees Paid by Opposing Party
9. Frivolous Pleadings and Claims
10. Sanctions for Frivolous Pleadings and Motions
11. Vexatious Litigants
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- 41. Damages
- 42. Settlement
- 43-50. [Reserved for expansion.]

## Subtitle D. Appeals

- 51. Appeals
- 52. Security for Judgments Pending Appeal
- 53-60. [Reserved for expansion.]

## SUBTITLE A GENERAL PROVISIONS

### CHAPTER 5 Rule of Decision

- Sec.  
5.001. Rule of Decision.

**Sec. 5.001. Rule of Decision.**

The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution or the laws of this state, the constitution of this state, and the laws of this state.

### CHAPTER 6

#### Governmental Exemption from Bond and Security Requirements

- |   |   |
|---|---|
| Sec.<br>6.001. State and Federal Agencies Exempt from Bond for Court Costs or Appeal. | Sec.<br>6.003. Water Districts Exempt from Appeal Bond. |
| 6.002. Cities Exempt from Security for Court Costs.                                   |   |

**Sec. 6.001. State and Federal Agencies Exempt from Bond for Court Costs or Appeal.**

(a) A governmental entity or officer listed in Subsection (b) may not be required to file a bond for court costs incident to a suit filed by the entity or officer or for an appeal or writ of error taken out by the entity or officer and is not required to give a surety for the issuance of a bond to take out a writ of attachment, writ of sequestration, distress warrant, or writ of garnishment in a civil suit.

(b) The following are exempt from the bond requirements:

- (1) this state;
- (2) a department of this state;
- (3) the head of a department of this state;
- (4) a county of this state;
- (5) the Federal Housing Administration;
- (6) the Federal National Mortgage Association;
- (7) the Government National Mortgage Association;
- (8) the Veterans' Administration;
- (9) the administrator of veterans affairs;
- (10) any national mortgage savings and loan insurance corporation created by an act of congress as a national relief organization that operates on a statewide basis; and
- (11) the Federal Deposit Insurance Corporation in its capacity as receiver or in its corporate capacity.

(c) Notwithstanding Subsection (a), a county or district attorney is not exempted from filing a bond to take out an extraordinary writ unless the commissioners court of the county approves the exemption in an action brought in behalf of the county or unless the attorney general approves the exemption in an action brought in behalf of the state.

#### **Sec. 6.002. Cities Exempt from Security for Court Costs.**

(a) Security for costs may not be required of an incorporated city or town of this state in an action, suit, or proceeding.

(b) A municipality may institute and prosecute suits without giving security for cost and may appeal from judgment without giving supersedeas or cost bond. **Leg.H.** Stats. 2001 77th Leg. Sess. Ch. 625, § 1, effective September 1, 2001.

#### **Sec. 6.003. Water Districts Exempt from Appeal Bond.**

(a) A governmental entity listed in Subsection (b) may not be required to give bond on an appeal or writ of error taken in a civil case that the entity is prosecuting or defending in its official capacity.

(b) The following are exempt from the appeal bond requirements:

- (1) a water improvement district, a water control and improvement district, an irrigation district, a conservation and reclamation district, or a water control and preservation district organized under state law;
- (2) a levee improvement district organized under state law;
- (3) a drainage district organized under state law; and
- (4) an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution. **Leg.H.** Stats. 1997 75th Leg. Sess. Ch. 1070, § 46, effective September 1, 1997.



## CHAPTER 7

### Liability of Court Officers

#### Subchapter A. Liability of Officer

Sec.

7.001. Liability for Refusal or Neglect in Performance of Official Duties.

7.002. Liability for Deposits Pending Suit.

7.003. Liability Regarding Execution of Writs.

7.004 — 7.010. [Reserved.]

#### Subchapter B. Liability of Attorney

Sec.

7.011. Attorney's Liability for Costs.

7.012 — 7.020. [Reserved.]

#### Subchapter C. Suit on Official Bonds

7.021. Suit on Official Bonds.

#### *Subchapter A*

#### *Liability of Officer*

### **Sec. 7.001. Liability for Refusal or Neglect in Performance of Official Duties.**

(a) A clerk, sheriff, or other officer who neglects or refuses to perform a duty required under Title 42, Revised Statutes, or under a provision of this code derived from that title is liable for damages in a suit brought by a person injured by the officer's neglect or refusal.

(b) The officer may be punished for contempt of court for neglect or refusal in the performance of those duties.

### **Sec. 7.002. Liability for Deposits Pending Suit.**

(a) An officer who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action shall seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court.

(b) The officer shall keep in his office as part of his records an itemized inventory of property deposited with the court. The inventory must list the disposition of the property and the account for which the property was received.

(c) At the expiration of the officer's term, the officer shall transfer all deposited property and the inventory to the officer's successor in office. The successor shall give a receipt for the transferred property and the inventory.

(d) This section does not exempt an officer or the officer's surety from liability on the officer's bond due to neglect or other default in regard to the deposited property.

### **Sec. 7.003. Liability Regarding Execution of Writs.**

(a) Except as provided by Section 34.061, an officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer:

- (1) in good faith executes the writ as provided by law and by the Texas Rules of Civil Procedure; and

(2) uses reasonable diligence in performing his official duties.

(b) An officer shall execute a writ issued by a court of this state without requiring that bond be posted for the indemnification of the officer.

#### CASE NOTES

**Richardson v. Parker**, 903 S.W.2d 801, 1995 Tex. App. LEXIS 1803 (June 6, 1995). Where constables levied on a writ of execution and, thereafter, a landlord charged them with conversion on contention that his landlord's lien was superior to the writ, the constables met

their summary judgment burden regarding their right to immunity under Tex. Civ. Prac. & Rem Code Ann. § 7.003; affidavits showed that the constables were acting pursuant to a facially valid writ of execution and that their actions were taken in good faith.

#### Sec. 7.004 — 7.010. [Reserved for expansion.]

##### *Subchapter B*

##### *Liability of Attorney*

#### Sec. 7.011. Attorney's Liability for Costs.

An attorney who is not a party to a civil proceeding is not liable for payment of costs incurred by a party to the proceeding.

#### Sec. 7.012 — 7.020. [Reserved for expansion.]

##### *Subchapter C*

##### *Suit on Official Bonds*

#### Sec. 7.021. Suit on Official Bonds.

Suit may be brought in the name of this state alone on an official bond for the benefit of all the parties entitled to recover on the bond if:

- (1) the bond is made payable to this state or to an officer of this state; and
- (2) a recovery on the bond is authorized by or would inure to the benefit of parties other than this state.

### CHAPTER 8

#### State Exemption from Certain Fees: Fees Paid by Opposing Party

Sec.

8.01. State Exemption.

8.02. Fee Paid by Opposing Party.

#### Sec. 8.01. State Exemption.

The state is exempt from the payment of the filing fee imposed by Section 51.701, Government Code.

For more notes, see [www.lexis.com](http://www.lexis.com)