

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Code of Criminal Procedure
Chapter 9A
7/2/24

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12 CHAPTER 9A. TRADE, BUSINESS, OR OCCUPATION INJURIOUS TO PUBLIC
13 HEALTH

14 Revised Law

15 Art. 9A.001. ORDER REGARDING INJURIOUS TRADE, BUSINESS, OR
16 OCCUPATION. After an indictment or information has been presented
17 against a person for carrying on a trade, business, or occupation
18 injurious to the health of persons in the neighborhood, the court in
19 which the indictment or information is pending may issue an order:

20 (1) on the application of an interested person and
21 after hearing proof for and against the defendant, restraining the
22 defendant from carrying on the trade, business, or occupation
23 subject to a penalty the court considers proper; or

24 (2) regarding the manner and place of carrying on the
25 trade, business, or occupation as the court considers advisable.

26 (Code Crim. Proc., Art. 9.01 (part); New.)

1 because, in this context, the terms are synonymous.

2 Revised Law

3 Art. 9A.002. PERMANENT RESTRAINT AND BOND ON CONVICTION.

4 On conviction of the defendant at trial:

5 (1) the order restraining the defendant issued under
6 Article 9A.001 shall be made permanent; and

7 (2) the defendant shall be required to execute a bond
8 with security conditioned on the defendant not continuing, to the
9 detriment of the health of any neighborhood in the county where the
10 defendant carried on the trade, business, or occupation, the trade,
11 business, or occupation for which the defendant was convicted.

12 (Code Crim. Proc., Art. 9.01 (part); New.)

13 Source Law

14 Art. 9.01. . . . if upon trial, the defendant be
15 convicted, the restraint shall be made perpetual, and
16 the party shall be required to enter into bond, with
17 security, not to continue such trade, business or
18 occupation to the detriment of the health of such
19 neighborhood, or of any other neighborhood within the
20 county.

21 Revisor's Note

22 (1) Article 9.01, Code of Criminal Procedure,
23 provides that if a defendant is convicted, "the
24 restraint shall be made perpetual." The relevant
25 provisions of Article 9.01 relating to the restraint
26 are revised in Article 9A.001, Code of Criminal
27 Procedure, and the revised law adds a cross-reference
28 to that article for the convenience of the reader. The
29 revised law also substitutes "permanent" for
30 "perpetual" because, in this context, the terms are
31 synonymous and the substituted word is more consistent
32 with modern usage.

33 (2) Article 9.01, Code of Criminal Procedure,
34 provides that, if convicted, the "party" is required
35 to enter into a bond. Throughout this chapter, the
36 revised law substitutes "defendant" for "party" to
37 achieve consistency in terminology in the revised

1 chapter and because, in this context, the terms are
2 synonymous.

3 (3) Article 9.01, Code of Criminal Procedure,
4 provides that on conviction the defendant is required
5 to execute a bond "not to continue such trade, business
6 or occupation." Immediately preceding the quoted
7 language, the revised law adds "conditioned on the
8 defendant" for consistency in phrasing in the revised
9 chapter and because Article 9.03, Code of Criminal
10 Procedure, requires that condition in the bond. The
11 revised law adds "for which the defendant was
12 convicted" for clarity and the convenience of the
13 reader and because it is clear from the context that
14 the trade, business, or occupation for which the bond
15 is required is the one for which the defendant was
16 convicted.

17 (4) Article 9.01, Code of Criminal Procedure,
18 refers to "such neighborhood, or of any other
19 neighborhood within the county." The revised law
20 omits "such neighborhood" because "any . . .
21 neighborhood within the county" includes "such
22 neighborhood" and the revised law adds "where the
23 defendant carried on the trade, business, or
24 occupation" because it is clear from the context that
25 is the referenced county.

26 Revised Law

27 Art. 9A.003. BOND REQUIREMENTS. A bond executed under
28 Article 9A.002 shall:

- 29 (1) be payable to this state;
30 (2) be in a reasonable amount set by the court;
31 (3) specify the trade, business, or occupation for
32 which the defendant was convicted and the place where the defendant
33 carried on the trade, business, or occupation;
34 (4) be conditioned on the defendant not carrying on,

1 to the detriment of the health of any neighborhood in the county,
2 the specified trade, business, or occupation at the specified place
3 or any other place in the county;

4 (5) be signed and dated by the defendant and the
5 defendant's sureties; and

6 (6) be approved by and filed with the court. (Code
7 Crim. Proc., Art. 9.03; New.)

8 Source Law

9 Art. 9.03. REQUISITES OF BOND. Such bond shall
10 be payable to the State of Texas, in a reasonable
11 amount to be fixed by the court, conditioned that the
12 defendant will not carry on such trade, business or
13 occupation, naming the same, at such place, naming the
14 place, or at any other place in the county, to the
15 detriment of the health of the neighborhood. The bond
16 shall be signed by the defendant and his sureties and
17 dated, and shall be approved by the court taking the
18 same, and filed in such court.

19 Revisor's Note

20 (1) Article 9.03, Code of Criminal Procedure,
21 provides for certain requirements and conditions
22 relating to "[s]uch" bond. The provisions requiring
23 the bond described by that article are in Article 9.01,
24 Code of Criminal Procedure, revised in relevant part
25 as Article 9A.002, Code of Criminal Procedure, and the
26 revised law adds a cross-reference for the convenience
27 of the reader.

28 (2) Article 9.03, Code of Criminal Procedure,
29 provides that the bond shall be in an amount "fixed by
30 the court." The revised law substitutes "set" for
31 "fixed" because, in context, the terms are synonymous
32 and "set" is more commonly used in the Code of Criminal
33 Procedure.

34 (3) Article 9.03, Code of Criminal Procedure,
35 provides that the bond shall be conditioned on the
36 defendant not carrying on "such trade, business or
37 occupation, naming the same, at such place, naming the
38 place, or at any other place in the county, to the

1 detriment of the health of the neighborhood." It is
2 clear from the context that, first, "such trade,
3 business or occupation" is the one for which the bond
4 is required under Article 9.01, Code of Criminal
5 Procedure, and thus the one for which the defendant was
6 convicted, second, "naming the same" and "naming the
7 place," require the bond to specify the trade,
8 business, or occupation underlying the conviction and
9 specify the place where the defendant carried on the
10 trade, business, or occupation, and third, for
11 purposes of the bond, "the neighborhood" is "any . . .
12 neighborhood in the county," as required by Article
13 9.01, Code of Criminal Procedure. The revised law is
14 drafted accordingly.

15 (4) Article 9.03, Code of Criminal Procedure,
16 provides that the bond shall be approved by the court
17 "taking the same." The revised law omits the quoted
18 language because it is clear from the context that the
19 court taking the bond is the court with jurisdiction
20 over the case and the court that required and approved
21 the bond.

22 Revised Law

23 Art. 9A.004. CONSEQUENCE OF REFUSAL TO EXECUTE BOND. If a
24 defendant refuses to execute a bond when required under Article
25 9A.002, the court may:

- 26 (1) commit the defendant to jail; or
27 (2) issue an order requiring the sheriff to seize and
28 destroy the implements of or the goods and property used in
29 conducting the trade, business, or occupation for which the
30 defendant was convicted. (Code Crim. Proc., Art. 9.02.)

31 Source Law

32 Art. 9.02. REFUSAL TO GIVE BOND. If the party
33 refuses to give bond when required under the
34 provisions of the preceding Article, the court may
35 either commit him to jail, or make an order requiring
36 the sheriff to seize upon the implements of such trade,

1 business or occupation, or the goods and property used
2 in conducting such trade, business or occupation, and
3 destroy the same.

4 Revisor's Note

5 (1) Article 9.02, Code of Criminal Procedure,
6 refers to "the preceding Article." The relevant
7 portion of Article 9.01, Code of Criminal Procedure,
8 relating to when a bond must be executed, is revised in
9 Article 9A.002 and the revised law is drafted
10 accordingly.

11 (2) Article 9.02, Code of Criminal Procedure,
12 provides that a court may "make an order." The revised
13 law substitutes "issue" for "make" for the reason
14 stated in Revisor's Note (2) to Article 9A.001.

15 (3) Article 9.02, Code of Criminal Procedure,
16 refers to "such trade, business or occupation." The
17 revised law adds "for which the defendant was
18 convicted" for the reason stated in Revisor's Note (3)
19 to Article 9A.002.

20 Revised Law

21 Art. 9A.005. ACTION FOR BREACH OF BOND. (a) The district
22 or county attorney may bring an action in the name of the state for
23 breach of a bond executed under Article 9A.002 within two years
24 after the date of the breach.

25 (b) Showing the defendant continued, after executing the
26 bond, to carry on the trade, business, or occupation for which the
27 bond was executed is sufficient proof of the defendant's breach of
28 the bond. The full amount of the bond may be recovered from the
29 defendant and the defendant's sureties.

30 (c) An action brought under this article is governed by the
31 same rules governing a civil action. (Code Crim. Proc., Arts. 9.04,
32 9.05.)

33 Source Law

34 Art. 9.04. SUIT UPON BOND. Any such bond, upon
35 the breach thereof, may be sued upon by the district or
36 county attorney, in the name of the State of Texas,
37 within two years after such breach, and not

1 afterwards; and such suits shall be governed by the
2 same rules as civil actions.

3 Art. 9.05. PROOF. It shall be sufficient proof
4 of the breach of any such bond to show that the party
5 continued after executing the same, to carry on the
6 trade, business or occupation which he bound himself
7 to discontinue; and the full amount of such bond may be
8 recovered of the defendant and his sureties.

9 Revisor's Note

10 (1) Article 9.04, Code of Criminal Procedure,
11 refers to "such bond." The revised law adds a
12 cross-reference to Article 9A.002 for the reason
13 stated in Revisor's Note (1) to Article 9A.003.

14 (2) Article 9.04, Code of Criminal Procedure,
15 provides that a district or county attorney may file
16 suit "within two years after such breach, and not
17 afterwards." The revised law omits "and not
18 afterwards" as unnecessary because it is clear the
19 district or county attorney may not file the action
20 after the specified deadline.

21 (3) Article 9.05, Code of Criminal Procedure,
22 refers to a trade, business, or occupation "which he
23 [the defendant] bound himself to discontinue." The
24 revised law substitutes "for which the bond was
25 executed" for the quoted language because, in this
26 context, a trade, business, or occupation that the
27 defendant binds himself to discontinue is the trade,
28 business, or occupation for which the bond was
29 executed and the substituted language is more
30 consistent with modern usage.

31 Revised Law

32 Art. 9A.006. SEIZURE AND DESTRUCTION OF UNWHOLESOME FOOD OR
33 ADULTERATED MEDICINE. After a defendant is convicted of selling
34 unwholesome food or adulterated medicine, the court shall issue an
35 order for the sheriff or other proper officer to seize and destroy
36 any unwholesome food or adulterated medicine that remains in the
37 defendant's possession. (Code Crim. Proc., Art. 9.06.)

1 Source Law

2 Art. 9.06. UNWHOLESOME FOOD. After conviction
3 for selling unwholesome food or adulterated medicine,
4 the court shall enter and issue an order to the sheriff
5 or other proper officer to seize and destroy such as
6 remains in the hands of the defendant.

7 Revisor's Note

8 (1) Article 9.06, Code of Criminal Procedure,
9 provides that the court shall "enter and issue" an
10 order. The revised law provides that the court shall
11 issue an order because the duty to issue an order
12 includes the duty to enter the order.

13 (2) Article 9.06, Code of Criminal Procedure,
14 refers to unwholesome food or adulterated medicine "in
15 the hands of the defendant." The revised law
16 substitutes "in the defendant's possession" for the
17 quoted language because, in this context, the phrases
18 are synonymous and the substituted language is more
19 consistent with modern usage.