

By: Estes

S.B. No. 911

A BILL TO BE ENTITLED

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AN ACT

relating to the continuation and operation of the Texas Animal Health Commission; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 161.004, Agriculture Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl that die from a disease listed in Section 161.041 [~~of this code~~], or who owns or controls the land on which the livestock, exotic livestock, domestic fowl, or exotic fowl die or on which the carcasses are found, shall dispose of the carcasses in the manner required by the commission under this section [~~, within 24 hours after the carcasses are found.~~

~~[(1) bury the carcass of each animal by digging a grave five feet deep, placing the carcass in the grave, covering the carcass with lime, and filling the grave with dirt, or~~

~~[(2) set fire to the carcass of each animal and burn it until it is thoroughly consumed].~~

(c) The commission shall:

(1) determine the most effective methods of disposing of diseased carcasses, including methods other than burning or burial; and

1 (2) by rule prescribe the method or methods that a
2 person may use to dispose of a carcass as required by Subsection
3 (a).

4 (d) The commission by rule may delegate its authority under
5 this section to the executive director.

6 SECTION 2. Subsection (d), Section 161.021, Agriculture
7 Code, is amended to read as follows:

8 (d) A person is not eligible for appointment as a public
9 member of the commission if the person or the person's spouse:

10 (1) is registered, certified, or licensed by the
11 commission;

12 (2) is employed by or participates in the management
13 of a business entity or other organization regulated by the
14 commission or receiving money [~~funds~~] from the commission;

15 (3) owns or controls, directly or indirectly, more
16 than a 10 percent interest in a business entity or other
17 organization regulated by [~~the commission~~] or receiving money
18 [~~funds~~] from the commission; or

19 (4) uses or receives a substantial amount of tangible
20 goods, services, or money [~~funds~~] from the commission, other than
21 compensation or reimbursement authorized by law for commission
22 membership, attendance, or expenses.

23 SECTION 3. Section 161.023, Agriculture Code, is amended by
24 adding Subsection (c) to read as follows:

25 (c) A person appointed to the commission is entitled to
26 reimbursement, as provided by the General Appropriations Act, for
27 the travel expenses incurred in attending the training program,

1 regardless of whether attendance at the program occurs before or
2 after the person qualifies for the office.

3 SECTION 4. Section 161.027, Agriculture Code, is amended to
4 read as follows:

5 Sec. 161.027. SUNSET PROVISION. The Texas Animal Health
6 Commission is subject to Chapter 325, Government Code (Texas Sunset
7 Act). Unless continued in existence as provided by that chapter,
8 the commission is abolished September 1, 2019 [~~2007~~].

9 SECTION 5. Subchapter B, Chapter 161, Agriculture Code, is
10 amended by adding Section 161.0275 to read as follows:

11 Sec. 161.0275. COMPLIANCE WITH SUNSET RECOMMENDATIONS.

12 (a) The commission shall:

13 (1) comply with and implement the management action
14 recommendations regarding the commission adopted by the Sunset
15 Advisory Commission on January 10, 2007, as a result of its review
16 of the commission; and

17 (2) report to the Sunset Advisory Commission not later
18 than November 1, 2008, the information the commission requires
19 regarding the commission's implementation of the recommendations
20 under Subdivision (1).

21 (b) This section expires June 1, 2009.

22 SECTION 6. Section 161.028, Agriculture Code, is amended to
23 read as follows:

24 Sec. 161.028. RESTRICTIONS ON COMMISSION APPOINTMENT,
25 MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade
26 association" means a cooperative and voluntarily joined statewide
27 association of business or professional competitors in this state

1 designed to assist its members and its industry or profession in
2 dealing with mutual business or professional problems and in
3 promoting their common interest. The term does not include an
4 association formed to benefit or promote a particular breed of
5 livestock, exotic livestock, domestic fowl, or exotic fowl [~~An~~
6 ~~employee or paid consultant of the Texas Poultry Federation or a~~
7 ~~statewide Texas trade association in the field of livestock~~
8 ~~production may not be a member of the commission or an employee of~~
9 ~~the commission who is exempt from the state's position~~
10 ~~classification plan or is compensated at or above the amount~~
11 ~~prescribed by the General Appropriations Act for step 1, salary~~
12 ~~group 17, of the position classification salary schedule].~~

13 (b) A person may not be a member of the commission and may
14 not be a commission employee in a "bona fide executive,
15 administrative, or professional capacity," as that phrase is used
16 for purposes of establishing an exemption to the overtime
17 provisions of the federal Fair Labor Standards Act of 1938 (29
18 U.S.C. Section 201 et seq.), if:

19 (1) the person is an officer, employee, or paid
20 consultant of a Texas trade association in the field of livestock
21 production, exotic livestock production, domestic fowl production,
22 or exotic fowl production; or

23 (2) the person's spouse is an officer, manager, or paid
24 consultant of a [~~who is the spouse of a manager or paid consultant~~
25 ~~of the Texas Poultry Federation or a statewide]~~ Texas trade
26 association in the field of livestock production, exotic livestock
27 production, domestic fowl production, or exotic fowl production

1 ~~[may not be a commission member and may not be a commission employee~~
2 ~~who is exempt from the state's position classification plan or is~~
3 ~~compensated at or above the amount prescribed by the General~~
4 ~~Appropriations Act for step 1, salary group 17, of the position~~
5 ~~classification salary schedule].~~

6 (c) ~~[For the purposes of this section, a Texas trade~~
7 ~~association is a nonprofit, cooperative, and voluntarily joined~~
8 ~~association of business or professional competitors in this state~~
9 ~~designed to assist its members and its industry or profession in~~
10 ~~dealing with mutual business or professional problems and in~~
11 ~~promoting their common interest. A Texas trade association does~~
12 ~~not include an association formed to benefit or promote a~~
13 ~~particular breed of livestock or exotic livestock.~~

14 ~~[(d)]~~ A person may not serve as a member of the commission or
15 act as the general counsel to the commission or the agency if the
16 person is required to register as a lobbyist under Chapter 305,
17 Government Code, because of the person's activities for
18 compensation on behalf of a profession related to the operation of
19 the commission.

20 SECTION 7. Subsections (a) and (c), Section 161.029,
21 Agriculture Code, are amended to read as follows:

22 (a) It is a ground for removal from the commission if a
23 member:

24 (1) does not have at the time of appointment the
25 qualifications required by Section 161.021 ~~[of this code]~~;

26 (2) does not maintain during service on the commission
27 the qualifications required by Section 161.021 ~~[of this code]~~;

1 (3) is ineligible for membership under [~~violates a~~
2 ~~prohibition established by~~] Section 161.028 [~~of this code~~];

3 (4) cannot discharge the member's duties for a
4 substantial part of the term for which the member is appointed
5 because of illness or disability; or

6 (5) is absent from more than half of the regularly
7 scheduled commission meetings that the member is eligible to attend
8 during a calendar year unless that absence is excused by a majority
9 vote of the commission.

10 (c) If the executive director has knowledge that a potential
11 ground for removal exists, the executive director shall notify the
12 presiding officer of the commission of the potential ground. The
13 presiding officer shall then notify the governor and the attorney
14 general that a potential ground for removal exists. If the
15 potential ground for removal involves the presiding officer, the
16 executive director shall notify the next highest officer of the
17 commission, who shall notify the governor and the attorney general
18 that a potential ground for removal exists.

19 SECTION 8. Section 161.033, Agriculture Code, is amended to
20 read as follows:

21 Sec. 161.033. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

22 (a) The commission shall maintain a system to promptly and
23 efficiently act on complaints filed with the commission. The
24 commission shall maintain information about parties to the
25 complaint, the subject matter of the complaint, a summary of the
26 results of the review or investigation of the complaint, and its
27 disposition [~~prepare information of public interest describing the~~

1 ~~functions of the commission and the commission's procedures by~~
2 ~~which complaints are filed with and resolved by the commission. The~~
3 ~~commission shall make the information available to the public and~~
4 ~~appropriate state agencies].~~

5 (b) The commission shall make information available
6 describing its procedures for complaint investigation and
7 resolution [~~by rule shall establish methods by which consumers and~~
8 ~~licensees or permittees are notified of the name, mailing address,~~
9 ~~and telephone number of the commission for the purpose of directing~~
10 ~~complaints to the commission. The commission may provide for that~~
11 ~~notification:~~

12 [~~(1) on each registration form, application, or~~
13 ~~written contract for services of an individual or entity regulated~~
14 ~~under this chapter; or~~

15 [~~(2) in a bill for service provided by an individual or~~
16 ~~entity regulated under this chapter].~~

17 (c) The commission shall periodically notify the parties to
18 a complaint of the status of the complaint until its final
19 disposition [~~keep a file about each written complaint filed with~~
20 ~~the commission that the commission has authority to resolve. The~~
21 ~~commission shall provide to the person filing the complaint and the~~
22 ~~persons or entities complained about the commission's policies and~~
23 ~~procedures pertaining to complaint investigation and resolution.~~
24 ~~The commission, at least quarterly and until final disposition of~~
25 ~~the complaint, shall notify the person filing the complaint and the~~
26 ~~persons or entities complained about of the status of the complaint~~
27 ~~unless the notice would jeopardize an undercover investigation.~~

1 ~~[(d) The commission shall keep information about each~~
2 ~~complaint filed with the commission. The information shall~~
3 ~~include:~~

4 ~~[(1) the date the complaint is received,~~

5 ~~[(2) the name of the complainant,~~

6 ~~[(3) the subject matter of the complaint,~~

7 ~~[(4) a record of all persons contacted in relation to~~
8 ~~the complaint,~~

9 ~~[(5) a summary of the results of the review or~~
10 ~~investigation of the complaint; and~~

11 ~~[(6) for complaints for which the agency took no~~
12 ~~action, an explanation of the reason the complaint was closed~~
13 ~~without action].~~

14 SECTION 9. Subchapter B, Chapter 161, Agriculture Code, is
15 amended by adding Sections 161.0335, 161.0336, 161.039, and 161.040
16 to read as follows:

17 Sec. 161.0335. TECHNOLOGY POLICY. The commission shall
18 implement a policy requiring the commission to use appropriate
19 technological solutions to improve the commission's ability to
20 perform its functions. The policy must ensure that the public is
21 able to interact with the commission on the Internet.

22 Sec. 161.0336. INFORMATION RELATING TO COMPLAINT
23 PROCEDURES. The commission shall:

24 (1) post information about its complaint procedures on
25 the home page of the Internet website maintained by the commission;

26 (2) post specific information on how to file a
27 complaint, what types of information to provide with the complaint,

1 and a description of the complaint process; and

2 (3) explain on that website what types of complaints
3 the commission has authority to resolve, distinguishing those from
4 complaints that the commission does not have authority to resolve.

5 Sec. 161.039. COMPLIANCE POLICY AND INTERNAL OPERATING
6 PROCEDURES. (a) The commission by rule shall adopt agencywide
7 compliance policies and internal operating procedures and convey
8 those policies and procedures to all officers and employees of the
9 commission.

10 (b) The commission by rule shall adopt clearly defined and
11 uniform procedures addressing compliance with this chapter and
12 commission rules. The compliance procedures shall include the
13 commission's process for:

14 (1) receiving and consistently responding to
15 complaints from the public and officers and employees of the
16 commission;

17 (2) checking for previous violations whenever a
18 complaint is filed;

19 (3) involving a supervisor in the approval of key
20 compliance decisions; and

21 (4) regularly updating complainants on the status of
22 their complaints.

23 Sec. 161.040. RULEMAKING AND DISPUTE RESOLUTION
24 PROCEDURES. (a) The commission shall develop and implement a
25 policy to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter
27 2008, Government Code, for the adoption of commission rules; and

1 (2) appropriate alternative dispute resolution
2 procedures under Chapter 2009, Government Code, to assist in the
3 resolution of internal and external disputes under the commission's
4 jurisdiction.

5 (b) The commission's procedures relating to alternative
6 dispute resolution must conform, to the extent possible, to any
7 model guidelines issued by the State Office of Administrative
8 Hearings for the use of alternative dispute resolution by state
9 agencies.

10 (c) The commission shall designate a trained person to:

11 (1) coordinate the implementation of the policy
12 adopted under Subsection (a);

13 (2) serve as a resource for any training needed to
14 implement the procedures for negotiated rulemaking or alternative
15 dispute resolution; and

16 (3) collect data concerning the effectiveness of those
17 procedures, as implemented by the commission.

18 SECTION 10. Section 161.041, Agriculture Code, is amended
19 by amending Subsections (a) through (d) and adding Subsections (f)
20 and (g) to read as follows:

21 (a) The commission shall protect all livestock, exotic
22 livestock [~~domestic animals~~], [~~and~~] domestic fowl, and exotic fowl
23 from the following:

- 24 (1) tuberculosis;
- 25 (2) anthrax;
- 26 (3) glanders;
- 27 (4) infectious abortion;

- 1 (5) hemorrhagic septicemia;
- 2 (6) hog cholera;
- 3 (7) Malta fever;
- 4 (8) foot-and-mouth disease;
- 5 (9) rabies among animals other than canines;
- 6 (10) bacillary white diarrhea among fowl;
- 7 (11) equine infectious anemia; and
- 8 (12) other diseases recognized as communicable by the
- 9 veterinary profession.

10 (b) The commission may act to eradicate or control any
11 disease or agent of transmission for any disease that affects
12 livestock, exotic livestock, ~~domestic animals,~~ domestic fowl, or
13 exotic fowl, ~~or canines~~ regardless of whether the disease is
14 communicable, even if the agent of transmission is an animal
15 species that is not subject to the jurisdiction of the commission.
16 The commission may adopt any rules necessary to carry out the
17 purposes of this subsection, including rules concerning testing,
18 movement, inspection, and treatment.

19 (c) A person commits an offense if the person knowingly
20 fails to handle, in accordance with rules adopted by the
21 commission, livestock, exotic livestock, domestic fowl, or exotic
22 fowl ~~[an animal]~~ infected with a disease listed in Subsection (a)
23 ~~[of this section]~~.

24 (d) A person commits an offense if the person knowingly
25 fails to identify or refuses to permit an agent of the commission to
26 identify, in accordance with rules adopted by the commission,
27 livestock, exotic livestock, domestic fowl, or exotic fowl ~~[an~~

1 ~~animal]~~ infected with a disease listed in Subsection (a) [~~of this~~
2 ~~section]~~.

3 (f) In complying with this section, the commission may not
4 infringe on or supersede the authority of any other agency of this
5 state, including the authority of the Parks and Wildlife Department
6 relating to wildlife. If a conflict of authority occurs, the
7 commission shall assume responsibility for disease control
8 efforts, but work collaboratively with the other agency to enable
9 each agency to effectively carry out its responsibilities.

10 (g) The commission's authority to control or eradicate an
11 agent of transmission that is an animal species that is not subject
12 to the jurisdiction of the commission is limited to instances when a
13 disease that threatens livestock, exotic livestock, domestic fowl,
14 or exotic fowl has been confirmed or is suspected to exist in that
15 species and the commission determines that a serious threat to
16 livestock, exotic livestock, domestic fowl, or exotic fowl exists.

17 SECTION 11. Subchapter C, Chapter 161, Agriculture Code, is
18 amended by adding Sections 161.0412 and 161.0416 to read as
19 follows:

20 Sec. 161.0412. REGULATION AND REGISTRATION OF FERAL SWINE
21 HOLDING FACILITIES. (a) The commission may, for disease control
22 purposes, require the registration of feral swine holding
23 facilities.

24 (b) To prevent the spread of disease, the commission may
25 require a person to register with the commission if the person
26 confines feral swine in a holding facility for slaughter, sale,
27 exhibition, hunting, or any other purpose specified by commission

1 rule.

2 (c) Rules adopted under this section shall include
3 registration requirements, provisions for the issuance,
4 revocation, and renewal of a registration, disease testing,
5 inspections, recordkeeping, construction standards, location
6 limitations, and provisions relating to the treatment of swine in
7 and movement of swine to or from a feral swine holding facility.

8 (d) Rules authorized by this section may be adopted only for
9 disease-control purposes.

10 Sec. 161.0416. EMERGENCY MANAGEMENT. (a) The commission
11 may prepare and plan for, respond to, and aid in the recovery from
12 disaster events that may affect livestock, exotic livestock,
13 domestic fowl, or exotic fowl, including disease outbreaks,
14 hurricanes, floods, tornadoes, wildfires, and acts of terrorism.

15 (b) The commission may assist with local emergency
16 management planning. This subsection may not be construed to
17 affect the commission's responsibility under any other law,
18 including Chapter 418, Government Code, or any responsibility
19 delegated to the commission by an emergency management authority of
20 this state.

21 SECTION 12. Section 161.054, Agriculture Code, is amended
22 to read as follows:

23 Sec. 161.054. REGULATION OF MOVEMENT OF ANIMALS; EXCEPTION.
24 (a) As a control measure, the commission by rule may regulate the
25 movement of animals, including feral swine. The commission may
26 restrict the intrastate movement of animals, including feral swine,
27 even though the movement of the animals is unrestricted in

1 interstate or international commerce. The commission may require
2 testing, vaccination, or another epidemiologically sound procedure
3 before or after animals are moved.

4 (b) The commission by rule may prohibit or regulate the
5 movement of animals, including feral swine, into a quarantined
6 herd, premise, or area.

7 (c) The commission may not adopt a rule that prohibits a
8 person from moving animals, including feral swine, owned by that
9 person within unquarantined contiguous lands owned or controlled by
10 that person.

11 (d) On application of the owner of an animal, including a
12 feral swine, a restriction on the movement of the animal imposed
13 under this chapter may be modified by order of the executive
14 director of the commission if the owner demonstrates that the
15 restriction will result in unusual hardship for the owner. In
16 considering an application under this section, the executive
17 director may consider the effect of prolonged drought, inadequacy
18 of pasturage or unusual feed supply resulting from disaster or
19 other unforeseeable circumstances, or economic hardship.

20 (e) In connection with the regulation of the movement of
21 feral swine, the commission by rule may require disease testing
22 before movement of a feral swine from one location to another, and
23 establish the conditions under which feral swine may be
24 transported.

25 (f) The commission's authority to regulate the movement of
26 feral swine may not interfere with the authority of the Parks and
27 Wildlife Department to regulate the hunting or trapping of feral

1 swine.

2 SECTION 13. Section 161.055, Agriculture Code, is amended
3 by adding Subsection (d) to read as follows:

4 (d) Chapter 149 does not apply to animals tested by the
5 commission under this section.

6 SECTION 14. Subsection (a), Section 161.062, Agriculture
7 Code, is amended to read as follows:

8 (a) Except as provided by Section 161.0615, the [The]
9 commission shall give notice of a quarantine against another state,
10 territory, or country by publishing notice in a newspaper published
11 in Texas. The quarantine takes effect on the date of publication.
12 The commission shall pay the expense of publication out of any
13 appropriation made for office and stationery expenses of the
14 commission.

15 SECTION 15. Subchapter D, Chapter 161, Agriculture Code, is
16 amended by adding Section 161.0615 to read as follows:

17 Sec. 161.0615. STATEWIDE OR WIDESPREAD QUARANTINE.

18 (a) The commission may quarantine livestock, exotic livestock,
19 domestic fowl, or exotic fowl in all or any part of this state as a
20 means of immediately restricting the movement of animals
21 potentially infected with disease and shall clearly describe the
22 territory included in a quarantine area.

23 (b) The commission by rule may delegate its authority to
24 quarantine livestock, exotic livestock, domestic fowl, or exotic
25 fowl under this section to the executive director, who shall
26 promptly notify the members of the commission of the quarantine.

27 (c) The commission by rule shall prescribe the manner in

1 which notice of a statewide or widespread quarantine under this
2 section is to be published.

3 SECTION 16. Subchapter H, Chapter 161, Agriculture Code, is
4 amended by adding Sections 161.1375 and 161.150 to read as follows:

5 Sec. 161.1375. MOVEMENT OF FERAL SWINE. (a) A person
6 commits an offense if the person recklessly:

7 (1) moves feral swine in a manner that is not in
8 compliance with rules adopted by the commission under Section
9 161.0412 or 161.054; or

10 (2) as the owner or person in charge of a holding
11 facility in which a feral swine is held, permits another to remove
12 feral swine from the holding facility in a manner that is not in
13 compliance with those rules.

14 (b) An offense under this section is a Class C misdemeanor
15 for each feral hog that is moved or permitted to be removed unless
16 it is shown on the trial of the offense that the defendant has been
17 previously convicted under this section, in which event the offense
18 is a Class B misdemeanor.

19 Sec. 161.150. FAILURE TO REGISTER FERAL SWINE HOLDING
20 FACILITIES; HOLDING OF FERAL SWINE. (a) A person commits an
21 offense if the person recklessly:

22 (1) maintains a feral swine holding facility that is
23 not registered under Section 161.0412; or

24 (2) as the owner or person in charge of a holding
25 facility that is not registered under Section 161.0412, holds or
26 permits another to hold a feral swine in the holding facility.

27 (b) Each feral swine held or permitted to be held in

1 violation of Subsection (a)(2) constitutes a separate offense.

2 (c) An offense under this section is a Class C misdemeanor
3 unless it is shown on the trial of the offense that the defendant
4 has been previously convicted under this section, in which event
5 the offense is a Class B misdemeanor.

6 SECTION 17. Section 26.303, Water Code, is amended by
7 amending Subsection (a) and adding Subsection (a-1) to read as
8 follows:

9 (a) Except as provided by Subsection (a-1), the [The]
10 commission by rule shall adopt requirements for the safe and
11 adequate handling, storage, transportation, and disposal of
12 poultry carcasses. The rules must:

13 (1) specify the acceptable methods for disposal of
14 poultry carcasses, including:

15 (A) placement in a landfill permitted by the
16 commission to receive municipal solid waste;

17 (B) composting;

18 (C) cremation or incineration;

19 (D) extrusion;

20 (E) on-farm freezing;

21 (F) rendering;

22 (G) cooking for swine food; and

23 (H) any other method the commission determines to
24 be appropriate;

25 (2) require poultry carcasses stored on the site of a
26 poultry facility to be stored in a varmint-proof receptacle to
27 prevent odor, leakage, or spillage;

1 (3) prohibit the storage of poultry carcasses on the
2 site of a poultry facility for more than 72 hours; and

3 (4) authorize the on-site burial of poultry carcasses
4 only in the event of a major die-off that exceeds the capacity of a
5 poultry facility to handle and dispose of poultry carcasses by the
6 normal means used by the facility.

7 (a-1) A rule adopted under Subsection (a) may not apply to
8 the disposal of carcasses of poultry that died as a result of a
9 disease, which is governed by Section 161.004, Agriculture Code.

10 SECTION 18. The changes in law made by this Act to Sections
11 161.021 and 161.028, Agriculture Code, do not affect the selection
12 or term of a member or public member of the Texas Animal Health
13 Commission appointed before September 1, 2007.

14 SECTION 19. (a) Except as provided by Subsection (b) of
15 this section, the change in law made by this Act to Section 161.004,
16 Agriculture Code, takes effect January 1, 2008.

17 (b) The Texas Animal Health Commission shall adopt the rules
18 required by Section 161.004, Agriculture Code, as amended by this
19 Act, as soon as practicable after the effective date of this Act,
20 but not later than January 1, 2008.

21 SECTION 20. This Act takes effect September 1, 2007.