

By: Estes

S.B. No. 911

A BILL TO BE ENTITLED

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 that die from a disease listed in Section 161.041 ~~[of this code]~~, or who owns or controls the land on which the livestock die or on which the carcasses are found, shall dispose of the carcass 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 livestock carcasses, including methods other than burning or burial; and

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

1 (a).

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

4 SECTION 2. Section 161.021(d), Agriculture Code, is amended
5 to read as follows:

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

8 (1) is registered, certified, or licensed by the
9 commission;

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

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

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

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

23 (c) A person appointed to the commission is entitled to
24 reimbursement, as provided by the General Appropriations Act, for
25 the travel expenses incurred in attending the training program,
26 regardless of whether attendance at the program occurs before or
27 after the person qualifies for the office.

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

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

SECTION 5. Section 161.028, Agriculture Code, is amended to read as follows:

Sec. 161.028. RESTRICTIONS ON COMMISSION APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. The term does not include an association formed to benefit or promote a particular breed of livestock or exotic livestock ~~[An employee or paid consultant of the Texas Poultry Federation or a statewide Texas trade association in the field of livestock production may not be a member of the commission or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].~~

(b) A person may not be a member of the commission and may not be a commission employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime

1 provisions of the federal Fair Labor Standards Act of 1938 (29
2 U.S.C. Section 201 et seq.), if:

3 (1) the person is an officer, employee, or paid
4 consultant of a Texas trade association in the field of livestock
5 production; or

6 (2) the person's spouse is an officer, manager, or paid
7 consultant of a ~~[who is the spouse of a manager or paid consultant~~
8 ~~of the Texas Poultry Federation or a statewide]~~ Texas trade
9 association in the field of livestock production ~~[may not be a~~
10 ~~commission member and may not be a commission employee who is exempt~~
11 ~~from the state's position classification plan or is compensated at~~
12 ~~or above the amount prescribed by the General Appropriations Act~~
13 ~~for step 1, salary group 17, of the position classification salary~~
14 ~~schedule].~~

15 ~~(c) [For the purposes of this section, a Texas trade~~
16 ~~association is a nonprofit, cooperative, and voluntarily joined~~
17 ~~association of business or professional competitors in this state~~
18 ~~designed to assist its members and its industry or profession in~~
19 ~~dealing with mutual business or professional problems and in~~
20 ~~promoting their common interest. A Texas trade association does~~
21 ~~not include an association formed to benefit or promote a~~
22 ~~particular breed of livestock or exotic livestock.~~

23 ~~[(d)]~~ A person may not serve as a member of the commission or
24 act as the general counsel to the commission or the agency if the
25 person is required to register as a lobbyist under Chapter 305,
26 Government Code, because of the person's activities for
27 compensation on behalf of a profession related to the operation of

1 the commission.

2 SECTION 6. Sections 161.029(a) and (c), Agriculture Code,
3 are amended to read as follows:

4 (a) It is a ground for removal from the commission if a
5 member:

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

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

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

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

15 (5) is absent from more than half of the regularly
16 scheduled commission meetings that the member is eligible to attend
17 during a calendar year unless that absence is excused by a majority
18 vote of the commission.

19 (c) If the executive director has knowledge that a potential
20 ground for removal exists, the executive director shall notify the
21 presiding officer of the commission of the potential ground. The
22 presiding officer shall then notify the governor and the attorney
23 general that a potential ground for removal exists. If the
24 potential ground for removal involves the presiding officer, the
25 executive director shall notify the next highest officer of the
26 commission, who shall notify the governor and the attorney general
27 that a potential ground for removal exists.

SECTION 7. Section 161.033, Agriculture Code, is amended to read as follows:

Sec. 161.033. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition ~~[prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies]~~.

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

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

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

(c) The commission shall periodically notify the parties to a complaint of the status of the complaint until its final

disposition ~~[keep a file about each written complaint filed with the commission that the commission has authority to resolve. The commission shall provide to the person filing the complaint and the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.]~~

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

- ~~[(1) the date the complaint is received,~~
- ~~[(2) the name of the complainant,~~
- ~~[(3) the subject matter of the complaint,~~
- ~~[(4) a record of all persons contacted in relation to the complaint,~~
- ~~[(5) a summary of the results of the review or investigation of the complaint, and~~
- ~~[(6) for complaints for which the agency took no action, an explanation of the reason the complaint was closed without action].~~

SECTION 8. Subchapter B, Chapter 161, Agriculture Code, is amended by adding Sections 161.0335, 161.0336, 161.039, and 161.040 to read as follows:

Sec. 161.0335. TECHNOLOGY POLICY. The commission shall implement a policy requiring the commission to use appropriate

1 technological solutions to improve the commission's ability to
2 perform its functions. The policy must ensure that the public is
3 able to interact with the commission on the Internet.

4 Sec. 161.0336. INFORMATION RELATING TO COMPLAINT
5 PROCEDURES. The commission shall:

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

8 (2) post specific information on how to file a
9 complaint, what types of information to provide with the complaint,
10 and a description of the complaint process; and

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

14 Sec. 161.039. COMPLIANCE POLICY AND INTERNAL OPERATING
15 PROCEDURES. (a) The commission by rule shall adopt agencywide
16 compliance policies and internal operating procedures and convey
17 those policies and procedures to all officers and employees of the
18 commission.

19 (b) The commission by rule shall adopt clearly defined and
20 uniform procedures addressing compliance with this chapter and
21 commission rules. The compliance procedures shall include the
22 commission's process for:

23 (1) receiving and consistently responding to
24 complaints from the public and officers and employees of the
25 commission;

26 (2) checking for previous violations whenever a
27 complaint is filed;

1 (3) involving a supervisor in the approval of key
2 compliance decisions; and

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

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

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of commission rules; and

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

14 (b) The commission's procedures relating to alternative
15 dispute resolution must conform, to the extent possible, to any
16 model guidelines issued by the State Office of Administrative
17 Hearings for the use of alternative dispute resolution by state
18 agencies.

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

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) serve as a resource for any training needed to
23 implement the procedures for negotiated rulemaking or alternative
24 dispute resolution; and

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

27 SECTION 9. Section 161.041, Agriculture Code, is amended by

1 amending Subsection (b) and adding Subsections (f) and (g) to read
2 as follows:

3 (b) The commission may act to eradicate or control any
4 disease or agent of transmission for any disease that affects
5 livestock, exotic livestock, domestic animals, domestic fowl,
6 exotic fowl, or canines regardless of whether the disease is
7 communicable, even if the agent of transmission is an animal
8 species that is not subject to the jurisdiction of the commission.
9 The commission may adopt any rules necessary to carry out the
10 purposes of this subsection, including rules concerning testing,
11 movement, inspection, and treatment.

12 (f) In complying with this section, the commission may not
13 infringe on or supersede the authority of any other agency of this
14 state, including the authority of the Parks and Wildlife Department
15 relating to wildlife. If a conflict of authority occurs, the
16 commission shall assume responsibility for disease control
17 efforts, but work collaboratively with the other agency to enable
18 each agency to effectively carry out its responsibilities.

19 (g) The commission's authority to control or eradicate an
20 agent of transmission that is an animal species that is not subject
21 to the jurisdiction of the commission is limited to instances when a
22 disease that threatens livestock or fowl has been confirmed or is
23 suspected to exist in that species and the commission determines
24 that a serious threat to livestock or fowl exists.

25 SECTION 10. Subchapter C, Chapter 161, Agriculture Code, is
26 amended by adding Sections 161.0412 and 161.0416 to read as
27 follows:

1 Sec. 161.0412. REGULATION AND REGISTRATION OF FERAL SWINE
2 HOLDING FACILITIES. (a) The commission may, for disease control
3 purposes, require the registration of feral swine holding
4 facilities.

5 (b) To prevent the spread of disease, the commission may
6 require a person to register with the commission if the person
7 confines feral swine in a holding facility for slaughter, sale,
8 exhibition, hunting, or any other purpose specified by commission
9 rule.

10 (c) Rules adopted under this section shall include
11 registration requirements, provisions for the issuance,
12 revocation, and renewal of a registration, disease testing,
13 inspections, recordkeeping, construction standards, location
14 limitations, and provisions relating to the treatment of swine in
15 and movement of swine to or from a feral swine holding facility.

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

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

23 (b) The commission may assist with local emergency
24 management planning. This subsection may not be construed to
25 affect the commission's responsibility under any other law,
26 including Chapter 418, Government Code, or any responsibility
27 delegated to the commission by an emergency management authority of

1 this state.

2 SECTION 11. Section 161.054, Agriculture Code, is amended
3 to read as follows:

4 Sec. 161.054. REGULATION OF MOVEMENT OF ANIMALS; EXCEPTION.

5 (a) As a control measure, the commission by rule may regulate the
6 movement of animals, including feral swine. The commission may
7 restrict the intrastate movement of animals, including feral swine,
8 even though the movement of the animals is unrestricted in
9 interstate or international commerce. The commission may require
10 testing, vaccination, or another epidemiologically sound procedure
11 before or after animals are moved.

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

15 (c) The commission may not adopt a rule that prohibits a
16 person from moving animals, including feral swine, owned by that
17 person within unquarantined contiguous lands owned or controlled by
18 that person.

19 (d) On application of the owner of an animal, including a
20 feral swine, a restriction on the movement of the animal imposed
21 under this chapter may be modified by order of the executive
22 director of the commission if the owner demonstrates that the
23 restriction will result in unusual hardship for the owner. In
24 considering an application under this section, the executive
25 director may consider the effect of prolonged drought, inadequacy
26 of pasturage or unusual feed supply resulting from disaster or
27 other unforeseeable circumstances, or economic hardship.

1 (e) In connection with the regulation of the movement of
2 feral swine, the commission by rule may require disease testing
3 before movement of a feral swine from one location to another, and
4 establish the conditions under which feral swine may be
5 transported.

6 (f) The commission's authority to regulate the movement of
7 feral swine may not interfere with the authority of the Parks and
8 Wildlife Department to regulate the hunting or trapping of feral
9 swine.

10 SECTION 12. Section 161.062(a), Agriculture Code, is
11 amended to read as follows:

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

19 SECTION 13. Subchapter D, Chapter 161, Agriculture Code, is
20 amended by adding Section 161.0615 to read as follows:

21 Sec. 161.0615. STATEWIDE OR WIDESPREAD QUARANTINE. (a) The
22 commission may quarantine livestock or fowl in all or any part of
23 this state as a means of immediately restricting the movement of
24 animals potentially infected with disease and shall clearly
25 describe the territory included in a quarantine area.

26 (b) The commission by rule may delegate its authority to
27 quarantine livestock or fowl under this section to the executive

1 director, who shall promptly notify the members of the commission
2 of the quarantine.

3 (c) The commission by rule shall prescribe the manner in
4 which notice of a statewide or widespread quarantine under this
5 section is to be published.

6 SECTION 14. Subchapter H, Chapter 161, Agriculture Code, is
7 amended by adding Sections 161.1375 and 161.150 to read as follows:

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

10 (1) moves feral swine in a manner that is not in
11 compliance with rules adopted by the commission under Section
12 161.0412 or 161.054; or

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

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

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

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

27 (2) as the owner or person in charge of a holding

1 facility that is not registered under Section 161.0412, holds or
2 permits another to hold a feral swine in the holding facility.

3 (b) Each feral swine held or permitted to be held in
4 violation of Subsection (a)(2) constitutes a separate offense.

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

9 SECTION 15. (a) In this section, "commission" means the
10 Texas Animal Health Commission.

11 (b) The commission, the Texas Veterinary Medical Diagnostic
12 Laboratory, and the Department of Agriculture shall conduct a joint
13 study regarding this state's current and future capacity to perform
14 disease testing for livestock and fowl during an animal disease
15 outbreak or emergency. In conducting the study, the designated
16 agencies shall:

17 (1) determine the current testing capabilities and
18 capacity of animal health laboratories in this state;

19 (2) determine the current average time to conduct and
20 report tests for animal diseases, including the current average
21 time to report initial test results and required confirmation test
22 results conducted by the United States Department of Agriculture;

23 (3) project the capabilities and capacity of this
24 state's animal health laboratories that would be needed during a
25 statewide or nationwide animal disease outbreak over the next 20
26 years;

27 (4) assess the potential benefits of expanding or

1 combining existing animal health laboratories in this state,
2 including those operated in conjunction with the United States
3 Department of Agriculture and other cooperating entities;

4 (5) consider establishing or relocating animal health
5 laboratories in more accessible locations;

6 (6) consider the advisability of pursuing and
7 recommend incentives or other measures to promote the location of
8 additional federal animal health laboratories in this state;

9 (7) explore methods to reduce the average time to
10 report both initial testing results and federal confirmation
11 testing results for animal diseases; and

12 (8) project whether a change in the biosafety level,
13 as designated by the United States Department of Agriculture and
14 Centers for Disease Control and Prevention, is needed for animal
15 health laboratories in this state, based on projected future
16 testing capabilities and capacity levels.

17 (c) As part of the joint study, the commission shall
18 evaluate the research and information contained in the four
19 proposals submitted by groups in this state in 2006 to the United
20 States Department of Homeland Security for the National Bio and
21 Agro-Defense Facility to ensure that the study does not duplicate
22 the efforts of those entities.

23 (d) If, in reviewing the four proposals described by
24 Subsection (c) of this section, the commission determines that one
25 or more of the proposals are consistent with the results of the
26 commission's evaluation, the commission may support one or more of
27 the proposals as they relate to the regulatory efforts of the

1 commission and this state.

2 (e) If the United States Department of Homeland Security
3 selects one of the proposals described by Subsection (c) of this
4 section to house the national facility, the commission shall
5 integrate the research conducted as part of the joint study with the
6 research conducted as part of the selected proposal. The
7 commission shall also share its research and coordinate with the
8 group that submitted the selected proposal in relation to the
9 commission's and this state's regulatory efforts.

10 (f) The commission shall submit a report of the findings of
11 the joint study to the governor, the lieutenant governor, and the
12 speaker of the house of representatives as soon as practicable
13 after the decision-making process at the federal level is
14 completed, but not later than December 31, 2008.

15 (g) This section expires February 1, 2009.

16 SECTION 16. The changes in law made by this Act to Sections
17 161.021 and 161.028, Agriculture Code, do not affect the selection
18 or term of a member or public member of the Texas Animal Health
19 Commission appointed before September 1, 2007.

20 SECTION 17. (a) Except as provided by Subsection (b) of
21 this section, the change in law made by this Act to Section 161.004,
22 Agriculture Code, takes effect January 1, 2008.

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

27 SECTION 18. (a) Except as otherwise provided by Subsection

1 (b) of this section, this Act takes effect September 1, 2007.

2 (b) Section 15 of this Act takes effect immediately if this
3 Act receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for Section 15 to
6 have immediate effect, Section 15 takes effect September 1, 2007.