

By: Herrero, Cohen, Creighton

H.B. No. 2925

Substitute the following for H.B. No. 2925:

By: Rios Ybarra

C.S.H.B. No. 2925

A BILL TO BE ENTITLED

AN ACT

relating to protections provided by the Department of Agriculture for certain consumers; providing penalties.

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

SECTION 1. Section 13.001(a), Agriculture Code, is amended to read as follows:

(a) In this chapter:

(1) "Weight or measure of a commodity" means the weight or measure of a commodity as determined by a weighing or measuring device [~~includes a weight, scale, beam, or measure of any kind; an instrument or mechanical device for weighing or measuring; and an appliance or accessory connected with an instrument or mechanical device for weighing or measuring~~].

(2) "Sell" includes barter or exchange.

(3) "Weighing or measuring device" [~~"Pump"~~] means:

(A) a scale; or

(B) a mechanical or electronic device used to dispense or deliver a commodity by weight, volume, flow rate, or other measure [~~a gasoline, kerosene, or diesel fuel measuring or dispensing device~~].

SECTION 2. Section 13.002(a), Agriculture Code, is amended to read as follows:

(a) The department shall enforce the provisions of this chapter and shall supervise all weighing or measuring devices

1 ~~[weights and measures]~~ sold or offered for sale in this state. The
2 department may purchase apparatus as necessary for the
3 administration of this chapter.

4 SECTION 3. Sections 13.021(a), (c), and (d), Agriculture
5 Code, are amended to read as follows:

6 (a) The legal standard for the weight or measure of a
7 commodity ~~[of weights and measures]~~ in this state is the standard
8 weight or measure ~~[of weights and measures]~~ adopted and used by the
9 government of the United States for that commodity. If the United
10 States does not provide a standard ~~[of]~~ weight or measure for a
11 commodity, the standard for that commodity is that established by
12 this subchapter.

13 (c) Except as otherwise provided by an express contract, a
14 contract for work or sales by weight or measure of a commodity shall
15 be construed in accordance with the standards of this subchapter.

16 (d) The standards of this subchapter shall be the guide for
17 making any adjustment of weighing ~~[weights]~~ or measuring devices
18 ~~[measures]~~ under the law of this state.

19 SECTION 4. Subchapter B, Chapter 13, Agriculture Code, is
20 amended by adding Section 13.029 to read as follows:

21 Sec. 13.029. EXEMPTION OF WEIGHING OR MEASURING DEVICES.
22 The department by rule may exempt a weighing or measuring device
23 from a requirement established by this chapter if the department
24 determines that imposing or enforcing the requirement:

25 (1) is not cost-effective for the department;
26 (2) is not feasible with current resources or
27 standards; or

1 (3) will not substantially benefit or protect
2 consumers.

3 SECTION 5. Sections 13.036, 13.037, and 13.039, Agriculture
4 Code, are amended to read as follows:

5 Sec. 13.036. FALSE REPRESENTATION OF COMMODITY QUANTITY. A
6 person commits an offense if the person or the person's servant or
7 agent:

8 (1) sells or offers or exposes for sale a quantity of a
9 commodity or service that is less than the quantity the person
10 represents; or

11 (2) as a buyer furnishing the weight or measure of a
12 commodity or service by which the amount of the [~~a~~] commodity or
13 service is determined, takes or attempts to take more than the
14 quantity the person represents.

15 Sec. 13.037. USE OF INCORRECT WEIGHING [~~FALSE WEIGHT~~] OR
16 MEASURING DEVICE [~~MEASURE~~]. (a) A person commits an offense if the
17 person or the person's servant or agent uses an incorrect weighing
18 [~~a false weight~~] or measuring device [~~measure~~] in:

19 (1) buying or selling a commodity;

20 (2) computing a charge for services rendered on the
21 basis of weight or measure; or

22 (3) determining the weight or measure of a commodity,
23 if a charge is made for the determination.

24 (b) For the purpose of this section, a weighing [~~weight~~] or
25 measuring device [~~measure~~] is incorrect [~~false~~] if it:

26 (1) does not conform as closely as practicable to the
27 official standards;

1 (2) is not accurate;

2 (3) is of a construction that is not reasonably
3 permanent in adjustment or does not correctly repeat its
4 indications;

5 (4) facilitates the perpetration of fraud; or

6 (5) does not conform to the specifications and
7 tolerances established by the department under Section 13.114 [~~of~~
8 ~~this code~~].

9 Sec. 13.039. TESTING OF PACKAGE BY DEPARTMENT [~~SEALER~~].

10 (a) The department [~~A sealer appointed under Subchapter C of this~~
11 ~~chapter~~] shall from time to time weigh or measure a package[~~r~~] or an
12 amount of any commodity[~~r~~] that is kept or offered for sale, sold,
13 or in the process of delivery, in order to determine:

14 (1) if the commodity is of the amount or quantity
15 represented; or

16 (2) if the commodity is being offered for sale or sold
17 in accordance with law.

18 (b) If the department [~~a sealer~~] finds that a package or any
19 lot of a commodity contains less of the commodity than the amount
20 represented, the department [~~sealer~~] may seize the package or the
21 commodity as evidence.

22 (c) A person commits an offense if the person or the
23 person's employee or agent refuses to exhibit a commodity being
24 sold or offered for sale at a given weight or quantity, or
25 ordinarily sold in that manner, to the department [~~a sealer~~] for
26 testing and proving as to quantity.

27 SECTION 6. The heading to Subchapter C, Chapter 13,

1 Agriculture Code, is amended to read as follows:

2 SUBCHAPTER C. INSPECTION AND REGISTRATION OF WEIGHING OR MEASURING
3 DEVICES [~~WEIGHTS AND MEASURES~~]

4 SECTION 7. Section 13.101, Agriculture Code, is amended to
5 read as follows:

6 Sec. 13.101. REQUIRED INSPECTION. (a) At least once every
7 four years, or more often as required by the department, a weighing
8 [~~weight~~] or measuring device [~~measure~~] shall be inspected and
9 tested for correctness by the department [~~a sealer~~] if it:

10 (1) is kept for sale, sold, or used by a proprietor,
11 agent, lessee, or employee in proving the weight or measure,
12 including the size, quantity, extent, or area, of any item; or

13 (2) is purchased, offered, or submitted by a
14 proprietor, agent, lessee, or employee for sale, hire, or award.

15 (b) The department shall, to the extent necessary to ensure
16 compliance with the official standards, require additional
17 inspection and testing of weighing or measuring devices [~~weights~~
18 ~~and measures~~].

19 (c) A person who uses or keeps for use, or has or offers for
20 sale, a weighing [~~weight~~] or measuring device [~~measure~~] is
21 responsible for having the device [~~weight or measure~~] inspected and
22 tested as required by this section.

23 (d) Unless the department requires an additional
24 inspection, a weighing [~~weight~~] or measuring device [~~measure~~] that
25 is inspected and found correct by the department [~~a sealer~~] may be
26 kept for use, used, kept or offered for sale, or sold without
27 further testing.

1 (e) The department may inspect and test a weighing or
2 measuring device less frequently than required by Subsection (a):

3 (1) to accommodate complaint-based and risk-based
4 inspection schedules; or

5 (2) in response to an emergency or a limitation in
6 department funding.

7 SECTION 8. Sections 13.1011(a) and (c), Agriculture Code,
8 are amended to read as follows:

9 (a) A person who operates a weighing or measuring [~~pump,~~
10 ~~scale, or bulk or liquefied petroleum gas metering~~] device for a
11 commercial transaction shall [~~must~~] register annually with the
12 department.

13 (c) If a person fails to register as required by this
14 section and pay the fee required under Section 13.1151 [~~of this~~
15 ~~code~~], the department may assess a late fee against the person,
16 prohibit the operation of the weighing or measuring [~~pump, scale,~~
17 ~~or metering~~] device, or both assess the fee and prohibit the
18 operation of the [~~pump, scale, or metering~~] device.

19 SECTION 9. Section 13.1012(e), Agriculture Code, is amended
20 to read as follows:

21 (e) The department may conduct an inspection of an
22 applicant's or registrant's:

- 23 (1) facilities;
- 24 (2) inspecting and testing equipment and procedures;
- 25 (3) repair and calibration equipment, records, and
26 procedures; and
- 27 (4) transportation equipment.

1 SECTION 10. The heading to Section 13.111, Agriculture
2 Code, is amended to read as follows:

3 Sec. 13.111. REPAIR OR DESTRUCTION OF INCORRECT WEIGHING
4 [~~WEIGHTS~~] OR MEASURING DEVICES [~~MEASURES~~].

5 SECTION 11. Sections 13.111(a) and (b), Agriculture Code,
6 are amended to read as follows:

7 (a) If, in the judgment of the department [~~sealer~~], a
8 weighing [~~weight~~] or measuring device [~~measure~~] found to be
9 incorrect is not capable of being repaired, the department [~~sealer~~]
10 may condemn, seize, and destroy the device [~~weight or measure~~].

11 (b) If, in the judgment of the department [~~sealer~~], an
12 incorrect weighing [~~weight~~] or measuring device [~~measure~~] is
13 capable of being repaired, the department [~~sealer~~] shall place on
14 the device [~~weight or measure~~] a tag or other mark with the words
15 "Out of Order." The owner or user of the weighing [~~weight~~] or
16 measuring device [~~measure~~] may have it repaired within 30 days, but
17 may not use or dispose of it until it is reinspected and released
18 for use by the department or inspected and released for use in any
19 other manner authorized by department rule [~~sealed. After repair,~~
20 ~~the owner or user shall notify the sealer and the sealer shall~~
21 ~~reinspect the weight or measure. If it is found to be correct, the~~
22 ~~sealer shall remove the out-of-order tag and seal the weight or~~
23 ~~measure as provided by Section 13.110 of this code~~].

24 SECTION 12. Section 13.112, Agriculture Code, is amended to
25 read as follows:

26 Sec. 13.112. TESTS FOR STATE INSTITUTIONS. As requested by
27 the comptroller or the governing body of a state institution, the

1 department shall test each weighing [~~weight~~] or measuring device
2 [~~measure~~] used by a state institution for any purpose, including a
3 weighing or measuring device [~~weight or measure~~] used in checking
4 the receipt and distribution of supplies. The department shall
5 report results of the test to the chairman of the governing body of
6 the institution.

7 SECTION 13. Sections 13.113(a), (c), (d), and (e),
8 Agriculture Code, are amended to read as follows:

9 (a) The standards of weights and measures received from the
10 United States and certified by the National Institute of Standards
11 and Technology are the state's standards by which all state and
12 local standards of weights and measures are tried, authenticated,
13 proved, and certified [~~sealed~~].

14 (c) In addition to the standards kept by the state, the
15 department shall maintain a complete set of copies of the original
16 standards for use in adjusting local standards or in the
17 performance of other official duties. The department may purchase
18 additional sets of standards as necessary for use by a department
19 inspector or other department personnel [~~state scalers~~].

20 (d) At the request of a city, the department shall furnish
21 the city with copies of the state's standards or test and approve
22 other standards acquired by the city. The city shall reimburse the
23 state for the actual cost of the standards furnished, plus the costs
24 of freight and certification. All standards furnished to or tested
25 for a city shall be true and correct, [~~sealed and~~] certified by the
26 department [~~commissioner~~], and stamped with the letter "C". The
27 copies used by a city may be of any suitable material or

1 construction that the city requests, subject to approval by the
2 department.

3 (e) The department shall inspect and correct the standards
4 used by a department inspector, other department employee, or
5 individual or business licensed by the department to perform
6 private maintenance, repairs, or calibration of weighing or
7 measuring devices [~~a local sealer~~] at least once every year [~~two~~
8 ~~years~~]. The department shall keep a record of the inspection and
9 character of weights and measures inspected under this subsection.
10 [~~The city shall pay all expenses incurred in inspections under this~~
11 ~~subsection.~~]

12 SECTION 14. Section 13.114(a), Agriculture Code, is amended
13 to read as follows:

14 (a) The department shall establish tolerances and
15 specifications for commercial weighing or [~~and~~] measuring devices
16 [~~apparatus~~] used in this state. The tolerances and specifications
17 shall be similar to those recommended by the National Institute of
18 Standards and Technology.

19 SECTION 15. Sections 13.115(a) and (f), Agriculture Code,
20 are amended to read as follows:

21 (a) The department shall collect a fee in accordance with
22 this section for each test of a weighing [~~weight~~] or measuring
23 device [~~measure~~] required by this subchapter or performed on
24 request of the owner.

25 (f) The department shall charge a fee, as provided by
26 department rule, for precision testing of tapes, rules, glassware,
27 and other weighing or measuring devices performed by the

1 department's metrology laboratory.

2 SECTION 16. Sections 13.1151, 13.117, 13.118, and 13.119,
3 Agriculture Code, are amended to read as follows:

4 Sec. 13.1151. FEES FOR REGISTRATION AND INSPECTION. The
5 department may charge the owner or operator of a weighing or
6 measuring device a fee, as provided by department rule, to recover
7 the costs of registration and inspection of a weighing or [~~pump,~~
8 ~~scale, bulk or liquefied petroleum gas metering device, or other~~]
9 measuring [~~or dispensing~~] device required to be registered or
10 inspected under this chapter.

11 Sec. 13.117. REFUSING TO ALLOW [~~PERMIT~~] TEST OF WEIGHING
12 [~~WEIGHT~~] OR MEASURING DEVICE [~~MEASURE~~]. A person commits an offense
13 if the person neglects or refuses to allow [~~exhibit~~] a weighing
14 [~~weight~~] or measuring device [~~measure~~] under the person's control
15 or in the person's possession to be inspected, tested, or examined
16 by the department, and the inspection, test, or examination is
17 required by this chapter [~~or a sealer for inspection or examination~~
18 ~~as required by law~~].

19 Sec. 13.118. HINDERING DEPARTMENT PERSONNEL [~~SEALER~~]. A
20 person commits an offense if the person hinders or obstructs in any
21 way the department, a department inspector or other department
22 personnel [~~a sealer~~] in the performance of official duties.

23 Sec. 13.119. REMOVAL OF REGISTRATION [~~SEALER'S~~] TAG. A
24 person commits an offense if the person removes or obliterates a tag
25 or device placed on a weighing [~~weight~~] or measuring device
26 [~~measure~~] under this chapter [~~Section 13.110 or 13.111 of this~~
27 ~~code~~].

1 SECTION 17. Sections 13.120 and 13.121, Agriculture Code,
2 are amended to read as follows:

3 Sec. 13.120. SALE OR USE OF INCORRECT WEIGHING [~~FALSE~~
4 ~~WEIGHTS~~] OR MEASURING DEVICE [~~MEASURES~~]. (a) The department may
5 condemn and prohibit the sale or distribution of any incorrect
6 weighing [~~false weight~~] or measuring device [~~measure~~] that is sold,
7 offered for sale, or about to be sold in this state.

8 (b) A person commits an offense if the person or the
9 person's servant or agent:

10 (1) offers or exposes for sale, hire, or award or sells
11 an incorrect weighing [~~a false weight~~] or measuring device
12 [~~measure~~];

13 (2) possesses an incorrect weighing [~~a false weight~~]
14 or measuring device [~~measure~~]; or

15 (3) sells, offers for sale, uses, or possesses for the
16 purpose of sale or use a device or instrument to be used to falsify
17 or intended to falsify a weight or measure.

18 [~~(c) In this section, "false weight or measure" has the~~
19 ~~meaning assigned by Section 13.037 of this code.~~]

20 Sec. 13.121. DISPOSING OF CONDEMNED WEIGHING OR MEASURING
21 DEVICE [~~WEIGHT~~]. A person commits an offense if the person or the
22 person's servant or agent disposes of a weighing [~~weight~~] or
23 measuring device [~~measure~~] condemned under Section 13.111 or 13.120
24 [~~of this code~~] in a manner contrary to those sections.

25 SECTION 18. Section 13.253(b), Agriculture Code, is amended
26 to read as follows:

27 (b) An elected county public weigher must obtain a

1 certificate of authority as provided by Section 13.255 [~~of this~~
2 ~~code~~] and must execute a bond as provided by Section 13.256 [~~of this~~
3 ~~code~~] before issuing an official certificate of weight or measure
4 of a commodity. A county public weigher elected under this section
5 is subject to rules adopted by the commissioners court.

6 SECTION 19. Section 13.257(a), Agriculture Code, is amended
7 to read as follows:

8 (a) On each certificate of weight or measure of a commodity
9 that a public weigher or deputy public weigher issues, the public
10 weigher or deputy public weigher shall include the:

11 (1) time and date that the weight or measure of the
12 commodity [~~measurement~~] was taken;

13 (2) signature and license number of the public weigher
14 or deputy public weigher; and

15 (3) seal of the department.

16 SECTION 20. Section 13.259(a), Agriculture Code, is amended
17 to read as follows:

18 (a) A public weigher or deputy public weigher who
19 intentionally or knowingly issues a certificate of weight or
20 measure of a commodity giving a false weight or measure for the [~~a~~]
21 commodity [~~weighed or measured~~] commits an offense.

22 SECTION 21. Section 13.260(a), Agriculture Code, is amended
23 to read as follows:

24 (a) A person who intentionally or knowingly issues an
25 official certificate of weight or measure of a [~~for any~~] commodity
26 without first obtaining a certificate of authority under Section
27 13.255 [~~of this code~~], who issues an official certificate of weight

1 or measure of a commodity after revocation of the person's
2 certificate of authority, or who issues an official certificate of
3 weight or measure of a commodity without executing a bond as
4 required under Section 13.256 [~~of this code~~] commits an offense.

5 SECTION 22. Sections 13.401(a), (b), (d), and (f),
6 Agriculture Code, are amended to read as follows:

7 (a) A person who has a license issued under this subchapter
8 may [~~has all of the powers and duties of a sealer under this chapter~~
9 ~~except for~~]:

10 (1) inspect, test, maintain, and repair:
11 (A) a weighing or measuring device;
12 (B) a liquefied petroleum gas meter under
13 Subchapter F; or

14 (C) a ranch scale under Subchapter G;
15 (2) return an incorrect weighing or measuring device
16 to service under Section 13.111;

17 (3) prohibit an incorrect weighing or measuring device
18 from being used until the device is repaired, if the inspector
19 determines that the device can be repaired; and

20 (4) condemn and prohibit the further use of an
21 incorrect weighing or measuring device that the inspector
22 determines cannot be repaired [~~testing of a package under Section~~
23 ~~13.039,~~

24 [~~(2) peace officer status under Section 13.108(b),~~
25 ~~and~~

26 [~~(3) entering premises or conducting a stop under~~
27 ~~Section 13.108(c)].~~

1 (b) It is a defense to prosecution under Section 13.117 or
2 13.118 that the licensed inspector [~~sealer~~] is acting under the
3 authority of a license issued under this subchapter.

4 (d) Unless appointed an inspector [~~a sealer~~] under
5 Subchapter C, a person may not perform the functions of an inspector
6 [~~a sealer~~] without a license issued under this subchapter.

7 (f) A license holder under this subchapter shall conduct
8 inspecting, [~~or~~] testing, prohibiting, or condemning activities in
9 compliance with the rules of the department.

10 SECTION 23. Section 13.404(a), Agriculture Code, is amended
11 to read as follows:

12 (a) The department [~~by rule~~] may [~~adopt a system to~~]
13 periodically monitor and inspect or test weighing or measuring
14 devices that have been [~~scales~~] inspected and tested by a license
15 holder and any standards used by the license holder during an
16 inspection or test.

17 SECTION 24. Chapter 17, Agriculture Code, is amended by
18 adding Subchapter B-1 to read as follows:

19 SUBCHAPTER B-1. MOTOR FUEL QUALITY AND TESTING

20 Sec. 17.071. MINIMUM MOTOR FUEL QUALITY AND TESTING
21 STANDARDS. The department by rule shall adopt minimum motor fuel
22 quality and testing standards for motor fuel that is sold or offered
23 for sale in this state. The standards must comply with the
24 nationally recognized minimum standards established by:

25 (1) the American Society for Testing and Materials, as
26 those standards existed on September 1, 2009, for motor fuels other
27 than motor fuels blended with ethanol; and

1 (2) the National Institute of Standards and
2 Technology, as those standards existed on September 1, 2009, for
3 motor fuels blended with ethanol.

4 Sec. 17.072. TESTING OF MOTOR FUEL QUALITY. (a) The
5 department may collect samples and conduct testing at any location
6 where motor fuel is kept, transferred, sold, or offered for sale, to
7 verify that the motor fuel complies with the minimum standards
8 required by Section 17.071.

9 (b) On arriving at a facility to conduct testing under
10 Subsection (a), a representative of the department shall notify the
11 owner or manager of the facility of the representative's presence
12 and purpose.

13 (c) A person commits an offense if the person refuses to
14 allow a department representative to collect samples or conduct
15 motor fuel testing under Subsection (a).

16 Sec. 17.073. STOP-SALE ORDER. If the department has reason
17 to believe that motor fuel is in violation of this chapter or a rule
18 adopted under this chapter, the department may issue and enforce a
19 written order to stop the sale of the motor fuel. The department
20 shall present the order to the dealer, distributor, jobber,
21 supplier, or wholesaler who is in control of the motor fuel at the
22 time the motor fuel is tested. The person who receives the order
23 may not sell the motor fuel until the department determines that the
24 motor fuel is in compliance with this chapter and department rules.

25 SECTION 25. Sections 17.104(a) and (b), Agriculture Code,
26 are amended to read as follows:

27 (a) The commissioner may adopt rules consistent with this

1 chapter for the regulation of the sale of motor fuels, including
2 motor fuels that contain [~~containing~~] ethanol and methanol.

3 (b) The commissioner by rule may impose a fee for testing,
4 inspection, or the performance of other services provided as
5 determined necessary by the commissioner in the administration of
6 this chapter. A fee imposed under this subsection shall be
7 collected from each dealer, distributor, jobber, supplier, and
8 wholesaler on a periodic basis determined by the commissioner
9 without regard to whether the motor fuel is subject to regulation
10 under this chapter.

11 SECTION 26. Sections 17.155(a) and (b), Agriculture Code,
12 are amended to read as follows:

13 (a) The department [~~commissioner~~] may impose an
14 administrative penalty against a person regulated under this
15 chapter who violates this chapter or a rule or order adopted under
16 this chapter. Except as otherwise provided by this section, an
17 administrative penalty is imposed and collected in the manner
18 provided by Section 12.020.

19 (b) The penalty for a violation of this chapter or a rule or
20 order adopted under this chapter may not exceed \$5,000 [~~\$500~~] a day
21 for each violation. Each day a violation continues or occurs may be
22 considered a separate violation for purposes of imposing a penalty.

23 SECTION 27. Subchapter D, Chapter 17, Agriculture Code, is
24 amended by adding Section 17.156 to read as follows:

25 Sec. 17.156. TOLL-FREE NUMBER. The department shall
26 provide a toll-free telephone number for use by the public in
27 reporting violations of this subchapter.

1 SECTION 28. The following provisions of the Agriculture
2 Code are repealed:

3 (1) Section 13.004;

4 (2) Section 13.102;

5 (3) Section 13.104;

6 (4) Section 13.108;

7 (5) Section 13.109;

8 (6) Section 13.110;

9 (7) Sections 13.111(c) and (d); and

10 (8) Section 13.116.

11 SECTION 29. This Act takes effect September 1, 2009.