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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~~].

Same as House version.

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

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SECTION 3. Sections 13.021(a), (c), and (d),

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Agriculture Code, are amended to read as follows:

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

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

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

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

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

- (1) is not cost-effective for the department;
- (2) is not feasible with current resources or standards; or
- (3) will not substantially benefit or protect consumers.

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

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

- (1) sells or offers or exposes for sale a quantity of a commodity or service that is less than the quantity the person represents; or
- (2) as a buyer furnishing the weight or measure of a commodity or service by which the amount of the [a] commodity or service is determined, takes or attempts to take more than the quantity the person represents.

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

- (1) buying or selling a commodity;
 - (2) computing a charge for services rendered on the basis of weight or measure; or
 - (3) determining the weight or measure of a commodity, if a charge is made for the determination.
- (b) For the purpose of this section, a weighing [~~weight~~] or measuring device [~~measure~~] is incorrect [~~false~~] if it:
- (1) does not conform as closely as practicable to the official standards;

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- (2) is not accurate;
- (3) is of a construction that is not reasonably permanent in adjustment or does not correctly repeat its indications;
- (4) facilitates the perpetration of fraud; or
- (5) does not conform to the specifications and tolerances established by the department under Section 13.114 [~~of this code~~].

Sec. 13.039. TESTING OF PACKAGE BY DEPARTMENT [~~SEALER~~]. (a) ~~The department [A sealer appointed under Subchapter C of this chapter]~~ shall from time to time weigh or measure a package[;] or an amount of any commodity[;] that is kept or offered for sale, sold, or in the process of delivery, in order to determine:

- (1) if the commodity is of the amount or quantity represented; or
- (2) if the commodity is being offered for sale or sold in accordance with law.

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

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

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SECTION 6. The heading to Subchapter C, Chapter 13, Agriculture Code, is amended to read as follows:

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

Same as House version.

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

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

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

or

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

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

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

(d) Unless the department requires an additional

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inspection, a weighing [~~weight~~] or measuring device [~~measure~~] that is inspected and found correct by the department [~~a sealer~~] may be kept for use, used, kept or offered for sale, or sold without further testing.

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

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

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

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

Same as House version.

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

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

SECTION 9. Section 13.1012(e), Agriculture Code, is

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amended to read as follows:

- (e) The department may conduct an inspection of an applicant's or registrant's:
 - (1) facilities;
 - (2) inspecting and testing equipment and procedures;
 - (3) repair and calibration equipment, records, and procedures; and
 - (4) transportation equipment.

SECTION 10. The heading to Section 13.111, Agriculture Code, is amended to read as follows:
Sec. 13.111. REPAIR OR DESTRUCTION OF INCORRECT WEIGHING [~~WEIGHTS~~] OR MEASURING DEVICES [~~MEASURES~~].

Same as House version.

SECTION 11. Sections 13.111(a) and (b), Agriculture Code, are amended to read as follows:
(a) If, in the judgment of the department [~~sealer~~], a weighing [~~weight~~] or measuring device [~~measure~~] found to be incorrect is not capable of being repaired, the department [~~sealer~~] may condemn, seize, and destroy the device [~~weight or measure~~].
(b) If, in the judgment of the department [~~sealer~~], an incorrect weighing [~~weight~~] or measuring device [~~measure~~] is capable of being repaired, the department [~~sealer~~] shall place on the device [~~weight or measure~~] a tag or other mark with the words "Out of Order." The

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owner or user of the weighing [~~weight~~] or measuring device [~~measure~~] may have it repaired within 30 days, but may not use or dispose of it until it is reinspected and released for use by the department or inspected and released for use in any other manner authorized by department rule [~~sealed. After repair, the owner or user shall notify the sealer and the sealer shall reinspect the weight or measure. If it is found to be correct, the sealer shall remove the out of order tag and seal the weight or measure as provided by Section 13.110 of this code~~].

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

Sec. 13.112. TESTS FOR STATE INSTITUTIONS. As requested by the comptroller or the governing body of a state institution, the department shall test each weighing [~~weight~~] or measuring device [~~measure~~] used by a state institution for any purpose, including a weighing or measuring device [~~weight or measure~~] used in checking the receipt and distribution of supplies. The department shall report results of the test to the chairman of the governing body of the institution.

Same as House version.

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

(a) The standards of weights and measures received from the United States and certified by the National

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Institute of Standards and Technology are the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and certified ~~[sealed]~~.

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

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

(e) The department shall inspect and correct the standards used by a department inspector, other department employee, or individual or business licensed by the department to perform private maintenance, repairs, or calibration of weighing or measuring devices ~~[a local sealer]~~ at least once every year ~~[two years]~~. The department shall keep a record of the inspection and

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character of weights and measures inspected under this subsection. ~~[The city shall pay all expenses incurred in inspections under this subsection.]~~

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

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

Same as House version.

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

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

(f) The department shall charge a fee, as provided by department rule, for precision testing of tapes, rules, glassware, and other weighing or measuring devices performed by the department's metrology laboratory.

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

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follows:

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

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

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

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

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

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

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

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

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

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

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

Sec. 13.121. DISPOSING OF CONDEMNED WEIGHING OR MEASURING DEVICE [~~WEIGHT~~].

A person commits an offense if the person or the person's servant or agent disposes of a weighing [~~weight~~] or measuring device [~~measure~~] condemned under Section 13.111 or 13.120 [~~of this code~~] in a manner contrary to

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those sections.

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

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

Same as House version.

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

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

- (1) time and date that the weight or measure of the commodity [~~measurement~~] was taken;
- (2) signature and license number of the public weigher or deputy public weigher; and
- (3) seal of the department.

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

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

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

(a) A person who intentionally or knowingly issues an official certificate of weight or measure of a [~~for any~~] commodity without first obtaining a certificate of authority under Section 13.255 [~~of this code~~], who issues an official certificate of weight or measure of a commodity after revocation of the person's certificate of authority, or who issues an official certificate of weight or measure of a commodity without executing a bond as required under Section 13.256 [~~of this code~~] commits an offense.

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

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

(1) inspect, test, maintain, and repair:

(A) a weighing or measuring device;

(B) a liquefied petroleum gas meter under Subchapter F;

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or

(C) a ranch scale under Subchapter G;

(2) return an incorrect weighing or measuring device to service under Section 13.111;

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

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

~~[(2) peace officer status under Section 13.108(b); and~~

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

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

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

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

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

(a) The department ~~[by rule]~~ may ~~[adopt a system to]~~

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periodically monitor and inspect or test weighing or measuring devices that have been [seales] inspected and tested by a license holder and any standards used by the license holder during an inspection or test.

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

SUBCHAPTER B-1. MOTOR FUEL QUALITY AND TESTING

Sec. 17.071. MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS. The department by rule shall adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state. The standards must comply with the nationally recognized minimum standards established by: (1) the American Society for Testing and Materials, as those standards existed on September 1, 2009, for motor fuels other than motor fuels blended with ethanol; and (2) the National Institute of Standards and Technology, as those standards existed on September 1, 2009, other than the standard vapor to liquid ratio specification for motor fuels blended with ethanol.

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

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

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

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

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

(a) The commissioner may adopt rules consistent with this chapter for the regulation of the sale of motor fuels, including motor fuels that contain ~~containing~~ ethanol and methanol.

(b) The commissioner by rule may impose a fee for testing, inspection, or the performance of other services provided as determined necessary by the commissioner

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in the administration of this chapter. A fee imposed under this subsection shall be collected from each dealer, distributor, jobber, supplier, and wholesaler on a periodic basis determined by the commissioner without regard to whether the motor fuel is subject to regulation under this chapter.

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

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

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

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

Sec. 17.156. TOLL-FREE NUMBER. The department shall provide a toll-free telephone number for use by the

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public in reporting violations of this subchapter.

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

- (1) Section 13.004;
- (2) Section 13.102;
- (3) Section 13.104;
- (4) Section 13.108;
- (5) Section 13.109;
- (6) Section 13.110;
- (7) Sections 13.111(c) and (d); and
- (8) Section 13.116.

No equivalent provision.

SECTION 29. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.
(b) Subchapter B-1, Chapter 17, Agriculture Code, as added by this Act, takes effect January 1, 2010.

Same as House version.

SECTION __. Appropriations Limited to Revenue Collections. It is the intent of the Legislature that fees, fines, and other miscellaneous revenues as authorized and generated by this act, at a minimum, cover the cost of the programs authorized by this act.

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