

BILL ANALYSIS

H.B. 1494
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Agriculture & Livestock
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Observers note that in a recent legislative session the Department of Agriculture (TDA) regulatory programs were shifted to full cost recovery models and that recently the TDA implemented a variety of changes to maintain services with minimal or no fee increases. H.B. 1494 seeks to make additional adjustments to maximize efficiencies, modernize statutes, improve customer protection, streamline processes, and save the TDA resources.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Agriculture in SECTIONS 3.01, 3.03-3.06, 3.09-3.12, 4.16-4.19, 4.26, and 4.30 of this bill; the commissioner of insurance in SECTION 4.26 of this bill; and the commissioner of agriculture in SECTION 5.01 of this bill.

ANALYSIS

Administrative Penalties

H.B. 1494 amends the Agriculture Code to require, rather than authorize, a person charged with a violation of certain law, rules, or orders by a certain deadline to accept the determination of the Department of Agriculture (TDA) that a violation has occurred, including the recommended penalty, or make a written request for a hearing on the determination. The bill requires the commissioner of agriculture to issue an order approving the determination and ordering the payment of the recommended penalty, rather than requiring the TDA to set a hearing, if the person charged fails to timely respond to certain notice of the violation. The bill requires a person who accepts the determination of the TDA or fails to timely respond to the notice to pay the penalty by a certain deadline.

Cease and Desist Orders

H.B. 1494 amends the Agriculture Code to authorize the TDA to issue a cease and desist order prohibiting an unauthorized person from engaging in an activity regulated by the TDA, rather than authorizing the commissioner to issue such an order after notice and opportunity for a hearing. The bill authorizes a person to whom such a cease and desist order has been issued to seek relief from the order at any time by filing suit against the TDA in a district court of Travis County and sets out related provisions. The bill specifies that a violation of such a cease and desist order constitutes grounds for imposing an administrative penalty only if a violation of the law governing the activity prohibited by the order is grounds for imposing an administrative penalty.

H.B. 1494 establishes that a violation of such a cease and desist order constitutes grounds for imposing a civil penalty of not less than \$50 or more than \$2,000 for each violation and that each day a violation occurs or continues to occur may be considered a separate violation for purposes of imposing an administrative or civil penalty. The bill provides certain authorization for the

commissioner to bring a related civil action in a district court and provides for certain injunctive relief by the court and the attorney general. The bill makes it a Class A misdemeanor to violate such a cease and desist order and enhances the penalty for a subsequent conviction to a third degree felony.

Term and Renewal of Licenses

H.B. 1494 amends the Agriculture Code to authorize the TDA by rule to prescribe the term of a license or registration issued by the TDA notwithstanding any other provision of the Agriculture Code or the Texas Structural Pest Control Act that establishes the term of the license or registration. The bill removes certain references to annual license periods for public grain warehouse operator licenses and pesticide or herbicide applicator licenses and provides for florist or nursery registration periods, pesticide registration periods, pesticide dealer license periods, perishable commodities license periods, egg reseller license periods, and aquaculture license periods established by TDA rule. The bill provides for e-mail notification of an impending license or registration expiration. The bill removes language exempting a private applicator license from a provision setting each pesticide applicator license to expire at the end of the license period established by TDA rule. The bill repeals a provision making a private applicator license valid for five years.

Regulation of Weights and Measures

H.B. 1494 amends the Agriculture Code to change from a cap of \$500 to not less than \$250 or more than \$10,000 the amount of a civil penalty for which a person is liable for a violation of provisions relating to weights and measures or a rule adopted under such provisions. The bill provides for the recovery by the TDA and the attorney general of reasonable expenses incurred in obtaining related injunctive relief and civil penalties and provides for the appropriations of those expenses to the respective entity. The bill removes provisions establishing that a barrel consists of 31-1/2 gallons and that a hogshead consists of two barrels. The bill establishes that, for purposes of the retail sale of motor fuel only, the liquid gallon contains 231 cubic inches without adjustment based on the temperature of the liquid.

H.B. 1494 removes the Class C misdemeanor offense relating to a violation of a TDA rule relating to legal weights and measures standards. The bill makes the following offenses a violation of provisions relating to weights and measures rather than a Class C misdemeanor: offenses relating to standard net weight or count set by rule; sale of commodities by proper measure; sale of milk or cream in a nonstandard container; sale of cheese, meat, or meat food product by nonstandard weight; misrepresentation of price or quantity; false representation of commodity quantity; and sale of a commodity in violation of certain provisions. The bill increases from a Class C misdemeanor to a Class B misdemeanor, and enhances to a Class A misdemeanor if the person has been previously convicted of any of the offenses, the penalty for offenses relating to the sale of commodities by net weight, standard fill and quantity labeling for commodities in package form, use of an incorrect weighing or measuring device, and testing of a package by the TDA. The bill specifies that the offense relating to the use of an incorrect weighing or measuring device applies only if the applicable person knowingly uses an incorrect weighing or measuring device.

H.B. 1494 revises provisions relating to stop-sale orders to authorize the TDA to issue and enforce a written or printed order to stop the sale of a commodity or service if the TDA has reason to believe that the commodity is being sold or kept, offered, or exposed for sale in violation of provisions relating to weights and measures or that the commodity or service is being sold or offered for sale by or through the use of a weighing or measuring device that is in violation of such provisions.

H.B. 1494 authorizes the TDA to inspect a weighing or measuring device and the records of the owner, operator, or user of the device that relate to use of the device to determine whether the

device is in compliance with applicable provisions if the TDA has reason to believe that the device is being used for a commercial transaction and the device is not registered with the TDA. The bill establishes the conditions under which the TDA has reason to believe a weighing or measuring device is being used for a commercial transaction.

H.B. 1494 makes the requirement that a weighing or measuring device be inspected and tested for correctness by the TDA at least once every four years or more often as required by the TDA applicable only to a commercial weighing or measuring device unless the device is exempt by TDA rule. The bill removes the requirement that the TDA require additional inspection and testing of weighing or measuring devices to the extent necessary to ensure compliance with the official standards and instead authorizes the TDA to such extent to implement risk-based inspections, respond to complaints, and, as a term of probation, require or perform additional inspection and testing of commercial weighing or measuring devices. The bill makes related and clarifying changes regarding the inspection of such a device.

H.B. 1494 revises registration requirements relating to commercial weighing or measuring devices to require a person who owns or operates such a device to register the device with the TDA before using the device for a commercial transaction unless the device is exempt by TDA rule. The bill provides application requirements for a device registration, specifies that a registration is valid for one year unless a different period is established by TDA rule, and makes related changes.

H.B. 1494 makes provisions relating to the repair or destruction of incorrect weighing or measuring devices applicable only to commercial weighing or measuring devices, removes certain authority of a device owner or user to repair a device, and prohibits a device owner, operator, or user from destroying, replacing, or otherwise disposing of a device declared to be incorrect or condemned except as provided by TDA rule.

H.B. 1494 specifies that the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and certified are the standards of weights and measures maintained by the TDA and certified by the National Institute of Standards and Technology or a metrology laboratory certified by the institute, rather than the standards of weights and measures received from the United States and certified by the institute. The bill revises provisions relating to the standards furnished to or tested for a city and relating to the inspection and correction of the standards used by certain entities. The bill authorizes the TDA to adopt rules to regulate the frequency and place of inspection and correction of the standards used by an individual or business licensed by the TDA to perform certain device maintenance activities. The bill authorizes the TDA to inspect any standard used by an individual or business licensed by the TDA to perform such activities if the TDA has reason to believe a standard is no longer compliant.

H.B. 1494 authorizes, rather than requires, the TDA to collect a fee for each test of a weighing or measuring device required by applicable provisions or performed on request of the owner. The bill repeals a provision authorizing the TDA to collect prescribed fees for TDA inspection only once annually unless requested to perform additional tests by the owner of a weight or measure.

H.B. 1494 removes the Class C misdemeanor offense for failure or refusal to comply with tolerances and specifications for commercial weighing or measuring devices. The bill removes the Class C misdemeanor offense of neglecting to allow a test of a weighing or measuring device, increases from a Class C misdemeanor to a Class B misdemeanor the penalty for refusing to allow a test of a weighing or measuring device, and specifies that such offense includes the refusal to allow an authorized test. The bill increases the penalty for hindering TDA personnel from a Class C misdemeanor to a Class B misdemeanor. The bill enhances the penalty for refusing to allow a test of a weighing or measuring device or for hindering TDA personnel to a Class A misdemeanor if the person has been previously convicted of either one of those offenses.

H.B. 1494 includes in the offense of removal of a registration tag the removal of a registration tag required by the TDA. The bill specifies that an applicable person commits an offense relating to the sale or use of an incorrect weighing or measuring device only if the person knowingly performs an action that constitutes such offense. The bill enhances the penalty for removal of a registration tag, sale or use of an incorrect weighing or measuring device, or disposing of a condemned weighing or measuring device to a Class B misdemeanor if the person has been previously convicted of any of those offenses.

H.B. 1494 sets out provisions relating to the licensing of service technicians and service companies. The bill specifies the actions that constitute device maintenance activities, specifies the powers and duties of the TDA in regard to such licensing, and provides exemptions from license requirements. The bill, effective March 1, 2014, requires a nonexempt individual to hold a service technician license in order to perform or offer to perform device maintenance, to hold a service company license in order to employ an individual who performs or offers to perform device maintenance activities, or to hold a service technician license and a service company license in order to perform or offer to perform device maintenance activities as a sole proprietor. The bill, effective March 1, 2014, makes it a Class B misdemeanor to violate these license requirements or to cause another person to violate the requirements and enhances the penalty for a subsequent conviction to a Class A misdemeanor.

H.B. 1494 sets out related application requirements, service technician license requirements, and service company license requirements. The bill provides for a required insurance policy for a service company issued by an applicable insurance company or a surplus lines insurer that meets certain requirements and rules adopted by the commissioner of insurance. The bill sets out provisions relating to the term of a license, license renewal, and authorized practices by a license holder. The bill grants certain rulemaking authority to the TDA regarding the licensing of service technicians and service companies and requires the TDA to adopt rules necessary to implement provisions relating to such licensing not later than December 1, 2013. The bill requires the TDA to begin accepting applications for and issuing service technician licenses and service company licenses not later than January 1, 2014.

H.B. 1494 repeals provisions relating to a service person registration requirement and, effective March 1, 2014, repeals provisions governing the inspection and testing of liquefied petroleum gas meters, inspection and testing of ranch scales, and licensed inspectors of weighing and measuring devices.

Notice of Commodity Producers Board Elections

H.B. 1494 amends the Agriculture Code to remove statutory notice requirements for a referendum and election of a certified organization under provisions governing commodity producers boards and instead requires the commissioner of agriculture by rule to prescribe the manner for providing public notice of the referendum and election.

Plant Pest Quarantines

H.B. 1494 repeals Agriculture Code provisions relating to a required public hearing before putting into quarantine certain areas.

Disposition of Livestock Export Facilities

H.B. 1494 amends the Government Code to make provisions relating to state building construction and acquisition and surplus and salvage property inapplicable to the disposition, sale, or transfer of a pen, shed, or ancillary building constructed by and for the TDA for the processing of livestock before export.

Repealed Provisions

H.B. 1494 repeals the following provisions of the Agriculture Code:

- Section 13.1012
- Section 13.115(g)
- Section 71.006
- Section 76.113(b)

Effective March 1, 2014, H.B. 1494 repeals Subchapters F, G, and H, Chapter 13, Agriculture Code.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.