

AN ACT

relating to certain regulatory programs administered by the Department of Agriculture; providing penalties; imposing fees.

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

ARTICLE 1. ADMINISTRATIVE PENALTIES

SECTION 1.01. Section 12.020, Agriculture Code, is amended by amending Subsections (g), (h), (i), (j), (k), and (o) and adding Subsection (j-1) to read as follows:

(g) Not later than the 20th day after the date on which notice is received, the person charged shall ~~[may]~~ accept the determination of the department made under Subsection (e) ~~[of this section]~~, including the recommended penalty, or make a written request for a hearing on the determination.

(h) If the person charged with the violation accepts the determination of the department or fails to timely respond to the notice, the commissioner shall issue an order approving the determination and ordering the payment of the recommended penalty.

(i) If the person charged requests a hearing ~~[or fails to timely respond to the notice]~~, the department shall set a hearing and give notice of the hearing. The hearing shall be conducted under Section 12.032. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the

1 proposed penalty if a penalty is warranted. Based on the findings
2 of fact, conclusions of law, and recommendations of the judge, the
3 commissioner by order may find a violation has occurred and may
4 assess a penalty or may find that no violation has occurred.

5 (j) The department shall give notice of the commissioner's
6 order under Subsection (h) or (i) to the person charged. The notice
7 shall include:

8 (1) the findings of fact and conclusions of law
9 separately stated;

10 (2) the amount of the penalty ordered, if any;

11 (3) a statement of the right of the person charged to
12 judicial review of the commissioner's order, if any; and

13 (4) other information required by law.

14 (j-1) Not later than the 30th day after the date notice is
15 provided under Subsection (j), a person ordered to pay a penalty
16 under Subsection (h) shall pay the penalty.

17 (k) Within the 30-day period immediately following the day
18 on which the order under Subsection (i) becomes final under Section
19 2001.144, Government Code, the person charged with the penalty
20 shall:

21 (1) pay the penalty in full;

22 (2) pay the amount of the penalty and file a petition
23 for judicial review contesting the occurrence of the violation, the
24 amount of the penalty, or both the occurrence of the violation and
25 the amount of the penalty; or

26 (3) without paying the amount of the penalty, file a
27 petition for judicial review contesting the occurrence of the

violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(o) Judicial review of the order of the commissioner under Subsection (i):

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 1.02. The changes in law made by this article to Section 12.020, Agriculture Code, apply only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose. For purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

ARTICLE 2. NOTICE REGARDING RENEWAL OF LICENSE OR REGISTRATION

SECTION 2.01. Section 12.024(f), Agriculture Code, is amended to read as follows:

(f) At least 30 days before the expiration of a person's license or registration, the department shall attempt to send ~~[written]~~ notice of the impending license or registration expiration to the person at the license holder's or registrant's last known e-mail or physical address according to the records of the department.

ARTICLE 3. REGULATION OF WEIGHTS AND MEASURES

SECTION 3.01. Section 13.001(a), Agriculture Code, is

1 amended to read as follows:

2 (a) In this chapter:

3 (1) "Commercial weighing or measuring device" means a
4 weighing or measuring device used in a commercial transaction
5 ~~["Weight or measure of a commodity" means the weight or measure of a~~
6 ~~commodity as determined by a weighing or measuring device]~~.

7 (2) "Operator" or "user" means a person in possession
8 or control of a weighing or measuring device.

9 (3) "Sell" includes barter or exchange.

10 (4) ~~[(3)]~~ "Weighing or measuring device" means~~[+~~
11 ~~[(A)]~~ a scale~~+~~ or
12 ~~[(B)]~~ a mechanical or electronic device used to
13 dispense or deliver a commodity by weight, volume, flow rate, or
14 other measure or to compute the charge for a service.

15 (5) "Weight or measure of a commodity" means the
16 weight or measure of a commodity as determined by a weighing or
17 measuring device.

18 SECTION 3.02. Section 13.007, Agriculture Code, is amended
19 by amending Subsection (a) and adding Subsection (e) to read as
20 follows:

21 (a) A person who violates Subchapter B or C ~~[this chapter]~~
22 or a rule adopted under Subchapter B or C ~~[this chapter]~~ is liable
23 to the state for a civil penalty not to exceed \$500 for each
24 violation. Each day a violation continues may be considered a
25 separate violation for purposes of a civil penalty assessment.

26 (e) The department and the attorney general may each recover
27 reasonable expenses incurred in obtaining injunctive relief and

1 civil penalties under this section, including investigative costs,
2 court costs, reasonable attorney's fees, witness fees, and
3 deposition expenses. The expenses recovered by the department may
4 be appropriated only to the department for the administration and
5 enforcement of this chapter. The expenses recovered by the
6 attorney general may be appropriated only to the attorney general.

7 SECTION 3.03. Section 13.021(b), Agriculture Code, is
8 amended to read as follows:

9 (b) The department may adopt rules for the purpose of
10 administering this subchapter and bringing about uniformity
11 between the standards established under this subchapter and the
12 standards established by federal law. ~~[A person who violates a rule~~
13 ~~adopted under this subsection commits an offense.]~~

14 SECTION 3.04. Section 13.024, Agriculture Code, is amended
15 by amending Subsection (b) and adding Subsection (d) to read as
16 follows:

17 (b) ~~[The barrel consists of 31-1/2 gallons. A hogshead~~
18 ~~consists of two barrels.]~~ Except as provided by Subsections
19 [Subsection] (c) and (d), [of this section] all other measures of
20 capacity for liquids are derived from the gallon by continual
21 division by two, making half gallons, quarts, pints, half pints,
22 and gills.

23 (d) For purposes of the retail sale of motor fuel only, the
24 liquid gallon contains 231 cubic inches without adjustment based on
25 the temperature of the liquid.

26 SECTION 3.05. Section 13.027(b), Agriculture Code, is
27 amended to read as follows:

1 (b) A person violates this chapter [~~commits an offense~~] if
2 the person fails or refuses to comply with the rules adopted under
3 this section.

4 SECTION 3.06. Section 13.031(f), Agriculture Code, is
5 amended to read as follows:

6 (f) A person violates this chapter [~~commits an offense~~] if,
7 in violation of this section, the person sells a liquid commodity by
8 other than liquid measure or a commodity that is not liquid by a
9 measure other than length, weight, or numerical count.

10 SECTION 3.07. Section 13.033, Agriculture Code, is amended
11 to read as follows:

12 Sec. 13.033. SALE OF MILK OR CREAM IN NONSTANDARD
13 CONTAINER. A person violates this chapter [~~commits an offense~~] if
14 the person sells or keeps, offers, or exposes for sale milk or cream
15 in bottles or other containers of a capacity other than one of the
16 standard liquid measures provided for by Section 13.024 [~~of this~~
17 ~~code~~].

18 SECTION 3.08. Section 13.034(d), Agriculture Code, is
19 amended to read as follows:

20 (d) A person violates this chapter [~~commits an offense~~] if,
21 in violation of this section, the person sells or keeps, offers, or
22 exposes for sale cheese, meat, or a meat food product by a measure
23 other than standard net weight.

24 SECTION 3.09. Section 13.035(b), Agriculture Code, is
25 amended to read as follows:

26 (b) A person violates this chapter [~~commits an offense~~] if
27 the person:

1 (1) misrepresents the price of a commodity, item, or
2 service sold or offered or exposed for sale; or

3 (2) represents the price or the quantity of a
4 commodity, item, or service sold or offered or exposed for sale in a
5 manner intended or tending to mislead or deceive an actual or
6 prospective customer.

7 SECTION 3.10. Section 13.036, Agriculture Code, is amended
8 to read as follows:

9 Sec. 13.036. FALSE REPRESENTATION OF COMMODITY QUANTITY. A
10 person violates this chapter [~~commits an offense~~] if the person or
11 the person's servant or agent:

12 (1) sells or offers or exposes for sale a quantity of a
13 commodity or service that is less than the quantity the person
14 represents; or

15 (2) as a buyer furnishing the weight or measure of a
16 commodity or service by which the amount of the commodity or service
17 is determined, takes or attempts to take more than the quantity the
18 person represents.

19 SECTION 3.11. Section 13.037(a), Agriculture Code, is
20 amended to read as follows:

21 (a) A person commits an offense if the person or the
22 person's servant or agent knowingly uses an incorrect weighing or
23 measuring device in:

24 (1) buying or selling a commodity;

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

27 (3) determining the weight or measure of a commodity,

1 if a charge is made for the determination.

2 SECTION 3.12. Section 13.038, Agriculture Code, is amended
3 to read as follows:

4 Sec. 13.038. SALE OF COMMODITY IN VIOLATION OF SUBCHAPTER.
5 A person violates this chapter [~~commits an offense~~] if the person or
6 the person's servant or agent sells or keeps, offers, or exposes for
7 sale a commodity in violation of this subchapter.

8 SECTION 3.13. Section 13.040, Agriculture Code, is amended
9 to read as follows:

10 Sec. 13.040. STOP-SALE ORDER. (a) If the department has
11 reason to believe that a commodity is being sold or kept, offered,
12 or exposed for sale in violation of [~~Section 13.030, 13.031,~~
13 ~~13.032, 13.033, 13.034, 13.035, 13.036, or 13.037 of~~] this chapter
14 or that a commodity or service is being sold or offered for sale by
15 or through the use of a weighing or measuring device that is in
16 violation of this chapter [~~code~~], the department may issue and
17 enforce a written or printed order to stop the sale of the commodity
18 or service. The department shall present the order to the owner or
19 custodian of the commodity or seller of the service. The person
20 receiving the order may not sell the commodity or provide the
21 service until discharged by a court under Subsection (b) [~~of this~~
22 ~~section~~] or until the commissioner finds that the commodity or
23 weighing or measuring device is in compliance with this chapter
24 [~~the applicable section~~].

25 (b) The owner or custodian of a commodity or a person
26 selling or offering for sale a service prohibited from sale by an
27 order of the department is entitled to sue in a court of competent

1 jurisdiction where the commodity is found or the service is being
2 sold or offered for sale for a judgment as to the justification of
3 the order and for the discharge of the commodity or service in
4 accordance with the findings of the court.

5 (c) This section does not limit the right of the department
6 to proceed as authorized by other sections of this code
7 ~~[subchapter]~~.

8 SECTION 3.14. Section 13.041, Agriculture Code, is amended
9 to read as follows:

10 Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under
11 Section ~~[13.021, 13.027, 13.029, or each of Sections]~~ 13.030,
12 13.032, 13.037, or ~~[through]~~ 13.039 ~~[of this code]~~ is a Class C
13 misdemeanor.

14 (b) It is a defense to prosecution or to the imposition of a
15 civil or administrative penalty for a violation of ~~[under]~~ Sections
16 13.030-13.038 ~~[of this code]~~ that a discrepancy between the actual
17 weight or volume at the time of sale to a consumer and the weight
18 marked on the container or a discrepancy between the fill of a
19 container and the capacity of the container is due to unavoidable
20 leakage, shrinkage, evaporation, waste, or causes beyond the
21 control of the seller acting in good faith.

22 SECTION 3.15. Subchapter C, Chapter 13, Agriculture Code,
23 is amended by adding Section 13.1001 to read as follows:

24 Sec. 13.1001. AUTHORITY TO INSPECT. (a) If the department
25 has reason to believe that a weighing or measuring device is being
26 used for a commercial transaction and the device is not registered
27 with the department, the department may inspect the device and the

1 records of the owner, operator, or user of the device that relate to
2 use of the device to determine whether the device is in compliance
3 with this chapter.

4 (b) The department has reason to believe a weighing or
5 measuring device is being used for a commercial transaction if:

6 (1) the weighing or measuring device is found in close
7 proximity to commodities being sold or offered for sale by weight or
8 measure and the device appears to be under the control or in the
9 possession of the person selling the commodities or offering the
10 commodities for sale; or

11 (2) other available evidence is sufficient for a
12 prudent person to believe that the weighing or measuring device is
13 being used for a commercial transaction.

14 SECTION 3.16. Section 13.101, Agriculture Code, is amended
15 to read as follows:

16 Sec. 13.101. ~~[REQUIRED]~~ INSPECTION OF DEVICES. (a) Unless
17 a commercial weighing or measuring device is exempt from the
18 application of this section by department rule, a commercial
19 weighing or measuring device shall be inspected and tested for
20 correctness by the department at [At] least once every four years,
21 or more often as required by the department, [a weighing or
22 measuring device shall be inspected and tested for correctness by
23 the department] if it:

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

27 (2) is purchased, offered, or submitted by a

1 proprietor, agent, lessee, or employee for sale, hire, or award.

2 (b) The department may ~~[shall]~~, to the extent necessary to
3 ensure compliance with the official standards, implement
4 risk-based inspections, respond to complaints, and, as a term of
5 probation, require or perform additional inspection and testing of
6 commercial weighing or measuring devices.

7 (c) A person who uses or keeps for use, or has or offers for
8 sale, a commercial weighing or measuring device is responsible for
9 having the device inspected and tested as required by this section,
10 department rule, or department order imposing a term of probation.

11 ~~(d) [Unless the department requires an additional~~
12 ~~inspection, a weighing or measuring device that is inspected and~~
13 ~~found correct by the department may be kept for use, used, kept or~~
14 ~~offered for sale, or sold without further testing.~~

15 ~~[(e)]~~ The department may inspect and test a commercial
16 weighing or measuring device less frequently than required by
17 Subsection (a):

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

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

22 SECTION 3.17. Section 13.1011, Agriculture Code, is amended
23 to read as follows:

24 Sec. 13.1011. REQUIRED REGISTRATION. (a) Unless a
25 commercial weighing or measuring device is exempt from the
26 application of this section by department rule, a [A] person who
27 owns or operates a commercial weighing or measuring device ~~[for a~~

1 ~~commercial transaction]~~ shall register the device [~~annually~~] with
2 the department before using the device for a commercial
3 transaction.

4 (b) An application for a device registration must:

5 (1) be submitted to the department on a form
6 prescribed by the department;

7 (2) be accompanied by any other document or form
8 required by the department; and

9 (3) include the registration fee required under
10 Section 13.1151. [The department shall establish a system of
11 annual registration and may provide for staggered year-round
12 registration.]

13 (c) A registration under this section is valid for one year
14 unless a different period is established by department rule. The
15 registration must be renewed at or before the end of each
16 registration period and the application for renewal must include
17 the renewal fee required by department rule.

18 (d) If a person fails to register or renew a registration as
19 required by this section and pay the fee required under Section
20 13.1151, the department may assess a late fee against the person,
21 prohibit the operation of the weighing or measuring device, or both
22 assess the fee and prohibit the operation of the device.

23 [~~(d) The department shall adopt rules for the~~
24 ~~administration of this section and Section 13.1151 of this code.]~~

25 SECTION 3.18. Section 13.111, Agriculture Code, is amended
26 to read as follows:

27 Sec. 13.111. REPAIR OR DESTRUCTION OF INCORRECT COMMERCIAL

1 WEIGHING OR MEASURING DEVICES. (a) If, in the judgment of the
2 department, a commercial weighing or measuring device found to be
3 incorrect is not capable of being repaired, the department may
4 condemn, seize, and destroy the device.

5 (b) If, in the judgment of the department, an incorrect
6 commercial weighing or measuring device is capable of being
7 repaired, the department shall place on the device a tag or other
8 mark with the words "Out of Order." The owner or user of the
9 commercial weighing or measuring device may ~~[have it repaired~~
10 ~~within 30 days, but may]~~ not use ~~[or dispose of]~~ it until it is
11 reinspected and released for use by the department or inspected and
12 released for use in any other manner authorized by department rule.

13 (c) The owner, operator, or user of a commercial weighing or
14 measuring device may not destroy, replace, or otherwise dispose of
15 a device declared to be incorrect or condemned under this section
16 except as provided by department rule.

17 SECTION 3.19. Section 13.113, Agriculture Code, is amended
18 by amending Subsections (a), (d), and (e) and adding Subsections
19 (f), (g), and (h) to read as follows:

20 (a) The standards of weights and measures maintained by the
21 department ~~[received from the United States]~~ and certified by the
22 National Institute of Standards and Technology or a metrology
23 laboratory certified by the National Institute of Standards and
24 Technology are the state's standards by which all state and local
25 standards of weights and measures are tried, authenticated, proved,
26 and certified.

27 (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 and~~[7]~~ certified by the department~~[7, 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, or a metrology laboratory certified by the National Institute of Standards and Technology and approved by 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 device maintenance activities under Subchapter I ~~[private maintenance, repairs, or calibration of weighing or measuring devices at least once every year]~~.

(f) The department may adopt rules to regulate the frequency and place of inspection and correction of the standards used by an individual or business licensed by the department to perform device maintenance activities under Subchapter I.

(g) The department may inspect any standard used by an individual or business licensed by the department to perform device maintenance activities described by Subchapter I if the department has reason to believe a standard is no longer in compliance with this chapter.

(h) The department shall keep a record of the inspection and character of standards ~~[weights and measures]~~ inspected under this

1 section ~~[subsection]~~.

2 SECTION 3.20. Section 13.114, Agriculture Code, is amended
3 to read as follows:

4 Sec. 13.114. TOLERANCES. ~~[(a)]~~ The department shall
5 establish specifications and tolerances ~~[and specifications]~~ for
6 commercial weighing or measuring devices used in this state. The
7 specifications and tolerances ~~[and specifications]~~ shall be
8 similar to those recommended by the National Institute of Standards
9 and Technology.

10 ~~[(b) A person commits an offense if the person fails or~~
11 ~~refuses to comply with the tolerances and specifications~~
12 ~~established under this section.]~~

13 SECTION 3.21. Section 13.115(a), Agriculture Code, is
14 amended to read as follows:

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

18 SECTION 3.22. Section 13.117, Agriculture Code, is amended
19 to read as follows:

20 Sec. 13.117. REFUSING TO ALLOW TEST OF WEIGHING OR
21 MEASURING DEVICE. A person commits an offense if the person
22 ~~[neglects or]~~ refuses to allow a weighing or measuring device under
23 the person's control or in the person's possession to be inspected,
24 tested, or examined by the department, and the inspection, test, or
25 examination is required or authorized by this chapter.

26 SECTION 3.23. Section 13.119, Agriculture Code, is amended
27 to read as follows:

Sec. 13.119. REMOVAL OF REGISTRATION TAG. A person commits an offense if the person removes or obliterates a tag or device placed or required by the department to be placed on a weighing or measuring device under this chapter.

SECTION 3.24. Section 13.120(b), Agriculture Code, is amended to read as follows:

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

(1) offers or exposes for sale, hire, or award or sells an incorrect weighing or measuring device;

(2) possesses an incorrect weighing or measuring device; 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.

SECTION 3.25. Section 13.122, Agriculture Code, is amended to read as follows:

Sec. 13.122. PENALTIES. An offense under [~~Section 13.114~~
~~or~~] each of Sections 13.117 [~~13.116~~] through 13.121 is a Class C
misdemeanor.

SECTION 3.26. Chapter 13, Agriculture Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. LICENSING OF SERVICE TECHNICIANS AND SERVICE
COMPANIES

Sec. 13.451. DEFINITIONS. In this subchapter:

(1) "License holder" means a person who holds a
service company license or a service technician license.

1 (2) "Service company" means a person who holds a
2 service company license issued by the department under this
3 subchapter.

4 (3) "Service technician" means an individual who holds
5 a service technician license issued by the department under this
6 subchapter.

7 Sec. 13.452. DEVICE MAINTENANCE ACTIVITIES. A person
8 performs device maintenance activities if the person or the
9 person's employee:

10 (1) places a commercial weighing or measuring device
11 in service;

12 (2) installs, calibrates, or repairs a commercial
13 weighing or measuring device; or

14 (3) removes an out-of-order tag, stop-sale order,
15 security seal, lock, condemnation notice, or other form of use
16 prohibition placed on a weighing or measuring device by the
17 department.

18 Sec. 13.453. POWERS AND DUTIES OF DEPARTMENT. (a) To
19 verify compliance with licensing requirements, trade practices,
20 department rules, and this chapter, the department may periodically
21 or in response to a complaint or previous violation inspect an
22 applicant's or license holder's:

23 (1) facilities;

24 (2) inspecting and testing equipment and procedures;

25 (3) repair and calibration equipment, standards, and
26 procedures;

27 (4) transportation equipment; and

1 (5) invoices, work orders, and other records related
2 to device maintenance activities.

3 (b) The department may periodically or in response to a
4 complaint or previous violation monitor and inspect or test
5 weighing or measuring devices that have been inspected and tested
6 by a license holder and any standards used by the license holder
7 during an inspection or test.

8 (c) The department by rule may adopt additional
9 requirements for the issuance of a license and for the denial of an
10 application for a license or renewal of a license. Rules adopted by
11 the department under this subsection must be designed to protect
12 the public health, safety, and welfare and the proper inspection,
13 testing, and operation of commercial weighing or measuring devices.

14 (d) The department may adopt other rules necessary for the
15 regulation of device maintenance activities, for the proper
16 operation of commercial weighing or measuring devices, and to
17 protect the health, safety, and welfare of the public and license
18 holders.

19 (e) The department may specify the date, time, and place for
20 any inspection authorized by this section.

21 Sec. 13.454. EXEMPTIONS FROM LICENSE REQUIREMENTS. (a) A
22 person is not required to hold a license issued under this
23 subchapter if the person:

24 (1) is a department employee who is performing device
25 maintenance activities in the scope of the person's duties for the
26 department;

27 (2) is the owner or operator of a commercial weighing

1 or measuring device or an employee of the owner or operator of a
2 commercial weighing or measuring device and the person:

3 (A) completely removes the commercial weighing
4 or measuring device from the location at which the device was
5 installed, including a device subject to an out-of-order tag,
6 stop-sale order, security seal, lock, condemnation notice, or other
7 item placed on the device by the department to prohibit use of the
8 device; and

9 (B) notifies the department of the device's
10 removal not later than the 10th day after the date the device was
11 removed in the manner provided by department rule; or

12 (3) performs device maintenance activities only on a
13 device that is:

14 (A) exempt from the registration requirements of
15 Section 13.1011 under department rules;

16 (B) exempt from the inspection requirements of
17 Section 13.101 under department rules; and

18 (C) not required to be inspected by other
19 department rules.

20 (b) The department is not required to hold a license issued
21 under this subchapter.

22 Sec. 13.455. SERVICE TECHNICIAN LICENSE REQUIRED. Unless
23 the individual is exempt from the licensing requirement, an
24 individual may not perform or offer to perform device maintenance
25 activities unless the individual holds a service technician license
26 issued by the department under this subchapter.

27 Sec. 13.456. SERVICE COMPANY LICENSE REQUIRED. (a) Unless

1 the person is exempt from the license requirement, a person may not
2 employ an individual who performs or offers to perform device
3 maintenance activities unless the person holds a service company
4 license issued by the department under this subchapter.

5 (b) Unless the individual is exempt from the licensing
6 requirement, an individual may not perform or offer to perform
7 device maintenance activities as a sole proprietor unless the
8 individual holds a service technician license and a service company
9 license issued by the department under this subchapter.

10 Sec. 13.457. APPLICATION FOR LICENSE. An applicant for a
11 license under this subchapter must submit to the department:

- 12 (1) an application form prescribed by the department;
13 (2) any other documents required by the department;

14 and

- 15 (3) a fee in an amount set by the department.

16 Sec. 13.458. SERVICE TECHNICIAN LICENSE REQUIREMENTS. (a)
17 The department shall issue a license to each qualified applicant
18 who applies for a service technician license.

19 (b) The department by rule may require an applicant for the
20 issuance or renewal of a service technician license to meet one or
21 more of the following requirements:

- 22 (1) provide to the department proof that the applicant
23 has completed an academic, trade, or professional course of
24 instruction approved by the department;
25 (2) pass a written test; or
26 (3) pass a practical skills test.

27 Sec. 13.459. SERVICE COMPANY LICENSE REQUIREMENTS. (a) The

1 department shall issue a license to each qualified applicant who
2 applies for a service company license.

3 (b) An applicant for the issuance or renewal of a license
4 under this section must:

5 (1) submit to the department a certificate of
6 insurance evidencing that the applicant has an insurance policy
7 that meets the requirements of Section 13.460 effective for the
8 period for which the license is to be issued or renewed; and

9 (2) meet any other requirements provided by department
10 rule.

11 Sec. 13.460. INSURANCE POLICY REQUIRED FOR SERVICE COMPANY.
12 A service company shall maintain at all times while the service
13 company performs device maintenance activities a current effective
14 operations liability insurance policy issued by an insurance
15 company authorized to do business in this state or by a surplus
16 lines insurer that meets the requirements of Chapter 981, Insurance
17 Code, and rules adopted by the commissioner of insurance in an
18 amount set by the department and based on the type of licensed
19 activities to be performed.

20 Sec. 13.461. TERM OF LICENSE. A license issued under this
21 subchapter is valid for one year unless a different term is
22 established by department rule.

23 Sec. 13.462. LICENSE RENEWAL. A person licensed under this
24 subchapter must periodically renew the person's license. The
25 license expires unless the license holder submits an application
26 for renewal accompanied by the renewal fee set by the department or
27 by the late fee set by the department and meets the requirements for

1 renewal.

2 Sec. 13.463. PRACTICE BY LICENSE HOLDER. (a) A license
3 holder shall perform device maintenance activities in compliance
4 with department rules.

5 (b) A license holder may use only equipment approved by the
6 department, as provided by department rules, when performing device
7 maintenance activities.

8 Sec. 13.464. CRIMINAL PENALTY. (a) A person commits an
9 offense if the person violates Section 13.455 or 13.456 or causes
10 another person to violate Section 13.455 or 13.456.

11 (b) An offense under Subsection (a) is a Class B
12 misdemeanor, unless the person has been previously convicted of an
13 offense under this section, in which case the offense is a Class A
14 misdemeanor.

15 SECTION 3.27. The following provisions of the Agriculture
16 Code are repealed:

17 (1) Section 13.1012; and

18 (2) Section 13.115(g).

19 SECTION 3.28. (a) The following provisions of the
20 Agriculture Code are repealed:

21 (1) Subchapter F, Chapter 13;

22 (2) Subchapter G, Chapter 13; and

23 (3) Subchapter H, Chapter 13.

24 (b) This section takes effect March 1, 2014.

25 SECTION 3.29. The changes in law made by this article to
26 Sections 13.007, 13.021, 13.027, 13.031, 13.033, 13.034, 13.035,
27 13.036, 13.037, 13.038, 13.041, 13.114, 13.117, 13.119, 13.120,

13.122, 13.308, 13.358, and 13.407, Agriculture Code, apply only to an offense or violation committed on or after the effective date of the relevant change in law. An offense or violation committed before the effective date of the change in law is governed by the law in effect on the date the offense or violation was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense or violation was committed before the effective date of the change in law if any element of the offense or violation occurred before that date.

SECTION 3.30. Not later than December 1, 2013, the Department of Agriculture shall adopt rules necessary to implement Subchapter I, Chapter 13, Agriculture Code, as added by this article.

SECTION 3.31. Not later than January 1, 2014, the Department of Agriculture shall begin accepting applications for and issuing service technician licenses and service company licenses under Sections 13.458 and 13.459, Agriculture Code, as added by this article.

SECTION 3.32. Sections 13.455, 13.456, and 13.464, Agriculture Code, as added by this article, take effect March 1, 2014.

ARTICLE 4. NOTICE OF COMMODITY PRODUCERS BOARD ELECTIONS

SECTION 4.01. Section 41.023(b), Agriculture Code, is amended to read as follows:

(b) The commissioner by rule shall prescribe the manner for providing public notice under Subsection (a) ~~[of this section shall be published in one or more newspapers published and distributed~~

~~within the boundaries described in the petition. The notice shall be published for not less than once a week for three consecutive weeks, beginning at least 60 days before the date of the election. In addition, at least 60 days before the date of the election the certified organization shall give direct written notice to each county agent in any county within the boundaries described in the petition].~~

SECTION 4.02. The change in law made by this article to Section 41.023(b), Agriculture Code, applies only to an election ordered on or after the effective date of this Act. An election ordered before the effective date of this Act is governed by the law in effect when the election was ordered, and the former law is continued in effect for that purpose.

ARTICLE 5. REGULATION OF CITRUS PEST AND DISEASE MANAGEMENT

SECTION 5.01. Section 80.003(6), Agriculture Code, is amended to read as follows:

(6) "Citrus producer" means a person who grows citrus and receives or intends to receive income from the sale of citrus. The term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the citrus grown and available for marketing from a farm or to share in the proceeds from the sale of the citrus from the farm. The term includes a person who owns land that is primarily used to grow citrus and that is appraised based on agricultural use under Chapter 23, Tax Code, regardless of whether the person receives income from the sale of citrus, and there is an irrebuttable presumption that the person intends to receive income from the sale of citrus.

SECTION 5.02. Section 80.015(b), Agriculture Code, is amended to read as follows:

(b) The commissioner shall propose in a referendum the:

(1) maximum assessment to be paid by citrus producers ~~[having production]~~ in the pest management zone; and

(2) time for which the assessment will be made.

SECTION 5.03. Section 80.016(d), Agriculture Code, is amended to read as follows:

(d) A citrus producer ~~[having citrus production]~~ in a proposed or established pest management zone is entitled to:

(1) vote in a referendum concerning the pest management zone; and

(2) elect board members to represent the pest management zone.

SECTION 5.04. The changes in law made by this article to Sections 80.015(b) and 80.016(d), Agriculture Code, apply only to an election ordered on or after the effective date of this Act. An election ordered before the effective date of this Act is governed by the law in effect when the election was ordered, and the former law is continued in effect for that purpose.

ARTICLE 6. DISPOSITION OF LIVESTOCK EXPORT FACILITIES

SECTION 6.01. Section 2166.003, Government Code, is amended by adding Subsection (c) to read as follows:

(c) This chapter and Chapter 2175 do not apply to the disposition, sale, or transfer of a pen, shed, or ancillary building constructed by and for the Department of Agriculture for the processing of livestock before export.

1 ARTICLE 7. EFFECTIVE DATE

2 SECTION 7.01. Except as otherwise provided by this Act,
3 this Act takes effect September 1, 2013.

H.B. No. 1494

President of the Senate

Speaker of the House

I certify that H.B. No. 1494 was passed by the House on April 26, 2013, by the following vote: Yeas 130, Nays 10, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1494 on May 21, 2013, by the following vote: Yeas 120, Nays 27, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1494 was passed by the Senate, with amendments, on May 17, 2013, by the following vote: Yeas 28, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor