

By: King of Zavala

H.B. No. 1494

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain regulatory programs administered by the
3 Department of Agriculture; providing penalties; imposing fees.

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

5 ARTICLE 1. ADMINISTRATIVE PENALTIES

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

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

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

18 (i) If the person charged requests a hearing ~~[or fails to~~
19 ~~timely respond to the notice]~~, the department shall set a hearing
20 and give notice of the hearing. The hearing shall be conducted
21 under Section 12.032. The administrative law judge shall make
22 findings of fact and conclusions of law and promptly issue to the
23 commissioner a proposal for decision as to the occurrence of the
24 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

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

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

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

7 (2) is under the substantial evidence rule.

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

17 ARTICLE 2. CEASE AND DESIST ORDERS

18 SECTION 2.01. Section 12A.002, Agriculture Code, is amended
19 to read as follows:

20 Sec. 12A.002. CEASE AND DESIST ORDER. (a) If it appears to
21 the department [~~commissioner~~] that a person who is not licensed by
22 the department is violating a statute or rule that requires the
23 person to hold a license issued by the department or a statute or
24 rule relating to an activity regulated by the department, the
25 department [~~commissioner after notice and opportunity for a~~
26 ~~hearing~~] may issue a cease and desist order prohibiting the person
27 from engaging in the activity.

1 (b) The person to whom a cease and desist order has been
2 issued under Subsection (a) may seek relief from the order at any
3 time by filing suit against the department in a district court of
4 Travis County. The court shall fix the time of the hearing not
5 earlier than three days or later than 20 days after the date of
6 service of the notice. The burden is on the person subject to the
7 cease and desist order to show by a preponderance of the evidence
8 that the person is lawfully entitled to engage in the activity that
9 is the subject of the cease and desist order, that the action taken
10 or order issued by the department was not authorized, or, if the
11 order was authorized, that the order was an abuse of the
12 department's discretion.

13 (c) A violation of an order under this section constitutes
14 grounds for imposing an administrative penalty if a violation of
15 the law governing the activity prohibited by the order is grounds
16 for imposing an administrative penalty. A violation of an order
17 under this section constitutes grounds for imposing a civil penalty
18 of not less than \$50 or more than \$2,000 for each violation. Each
19 day a violation occurs or continues to occur may be considered a
20 separate violation for purposes of imposing an administrative or
21 civil penalty.

22 (d) If it appears that a person has violated or is
23 threatening to violate a cease and desist order issued under this
24 section, the commissioner may bring a civil action in a district
25 court for:

26 (1) injunctive relief to restrain the person from
27 continuing the violation or threat of violation;

1 (2) the assessment and recovery of a civil penalty
2 under Subsection (c); or

3 (3) both injunctive relief and a civil penalty.

4 (e) On application for injunctive relief and a finding by
5 the court that a person is violating or threatening to violate a
6 cease and desist order issued under this section, the court shall
7 grant injunctive relief as the facts warrant.

8 (f) At the request of the commissioner, the attorney general
9 shall bring an action for injunctive relief, to recover a civil
10 penalty, or both.

11 SECTION 2.02. Subchapter A, Chapter 12A, Agriculture Code,
12 is amended by adding Section 12A.004 to read as follows:

13 Sec. 12A.004. PENALTY FOR VIOLATING CEASE AND DESIST ORDER.

14 (a) A person commits an offense if the person violates a cease and
15 desist order issued under Section 12A.002.

16 (b) Except as provided by Subsection (c), an offense under
17 Subsection (a) is a Class A misdemeanor.

18 (c) An offense under Subsection (a) is a felony of the third
19 degree if the person has previously been convicted of an offense
20 under this section.

21 SECTION 2.03. The changes in law made by this article to
22 Section 12A.002, Agriculture Code, apply only to a violation
23 committed on or after the effective date of this Act. A violation
24 committed before the effective date of this Act is governed by the
25 law in effect on the date the violation was committed, and the
26 former law is continued in effect for that purpose. For purposes of
27 this section, a violation was committed before the effective date

1 of this Act if any element of the violation occurred before that
2 date.

3 ARTICLE 3. TERM AND RENEWAL OF LICENSES

4 SECTION 3.01. Section 12.023, Agriculture Code, is amended
5 to read as follows:

6 Sec. 12.023. TERM AND EXPIRATION OF REGISTRATION OR
7 LICENSES. (a) Notwithstanding any other provision of this code or
8 Chapter 1951, Occupations Code, that establishes the term of a
9 license or registration issued by the department, the department by
10 rule may prescribe the term of the license or registration.

11 (b) The department by rule shall adopt a system under which
12 registrations or licenses required by the department, including
13 licenses issued under Chapter 1951, Occupations Code, expire on
14 various dates during the year. The department may increase or
15 decrease the term of an initial or renewal license or registration
16 so that all licenses held by a person or a group of license holders
17 expire on the same date. For the period in which the registration
18 or license expiration date is changed, registration or license fees
19 shall be prorated on a monthly basis so that each registrant or
20 licensee pays only that portion of the fee that is allocable to the
21 number of months during which the registration or license is
22 valid. On the next renewal of the registration or license, the
23 total renewal fee is payable.

24 SECTION 3.02. Section 12.024(f), Agriculture Code, is
25 amended to read as follows:

26 (f) At least 30 days before the expiration of a person's
27 license or registration, the department shall attempt to send

1 ~~[written]~~ notice of the impending license or registration
2 expiration to the person at the license holder's or registrant's
3 last known e-mail or physical address according to the records of
4 the department.

5 SECTION 3.03. Section 14.023(b), Agriculture Code, is
6 amended to read as follows:

7 (b) An applicant must file a separate application for each
8 license, renewal, or amendment and shall accompany each application
9 for a license or renewal with a ~~[an annual]~~ license fee, as provided
10 by department rule. The department shall prescribe the information
11 to be contained in the application. A person who fails to submit a
12 renewal fee on or before the expiration date of the license must
13 pay, in addition to the renewal fee, the late fee provided by
14 Section 12.024.

15 SECTION 3.04. Sections 71.043(b), (c), and (d), Agriculture
16 Code, are amended to read as follows:

17 (b) A florist or nursery owner may apply for registration or
18 renewal of registration by submitting an application prescribed by
19 the department and a ~~[an annual]~~ fee. The fee shall be the sum of:

20 (1) an amount based on the size and type of a location,
21 as defined by department rule, where a florist or nursery owner
22 grows for sale or lease or offers for sale or lease a florist item or
23 nursery product; and

24 (2) an optional additional amount equal to 15 percent
25 of the amount described by Subdivision (1), to fund the Texas
26 nursery and floral account.

27 (c) Registrations under this section expire at the end of

1 the registration period established by department rule [~~one year~~
2 ~~after issuance~~]. A person who fails to submit a renewal fee on or
3 before the expiration date of the registration must pay, in
4 addition to the renewal fee, the late fee provided by Section 12.024
5 of this code.

6 (d) Upon receipt of the correct [~~annual~~] registration fee,
7 the department shall issue a registration certificate for each
8 location a florist or nursery owner has registered.

9 SECTION 3.05. Section 76.043(a), Agriculture Code, is
10 amended to read as follows:

11 (a) Registration of a pesticide expires at the end of the
12 registration period established by department rule. The [~~on the~~
13 ~~second anniversary of the date of its approval or renewal except~~
14 ~~that the~~] department shall by rule adopt a system under which
15 registrations expire on various dates during the year.

16 SECTION 3.06. Section 76.072, Agriculture Code, is amended
17 to read as follows:

18 Sec. 76.072. EXPIRATION. A pesticide dealer license
19 expires at the end of the license period established by department
20 rule. The [~~on the second anniversary of the date of its granting or~~
21 ~~renewal unless the~~] department by rule may adopt [~~adopts~~] a system
22 under which licenses expire on specified dates during a year.

23 SECTION 3.07. Section 76.108(b), Agriculture Code, is
24 amended to read as follows:

25 (b) A person shall apply for an original or renewal
26 commercial applicator license on forms prescribed by the regulatory
27 agency. The application shall include information as required by

1 rule of the head of the agency and must be accompanied by a [~~an~~
2 ~~annual~~] license fee, as fixed by the head of the agency.

3 SECTION 3.08. Section 76.109(b), Agriculture Code, is
4 amended to read as follows:

5 (b) A person shall apply for an original or renewal
6 noncommercial applicator license on forms prescribed by the
7 regulatory agency. The applicant shall include with the application
8 a [~~an annual~~] license fee, as fixed by the governing body of or the
9 head of the regulatory agency. The governing body of or the head of
10 the regulatory agency may set other fees as necessary to defray the
11 costs of administering a pesticide applicator certification
12 program.

13 SECTION 3.09. Sections 76.113(a) and (c), Agriculture Code,
14 are amended to read as follows:

15 (a) Each pesticide applicator license issued under this
16 chapter [~~, other than a private applicator license,~~] expires at the
17 end of the license period established by department rule.

18 (c) Except as provided by Subsection (d) [~~of this section~~],
19 a person having a valid license issued under this subchapter may
20 renew the license for another term without retesting by paying to
21 the regulatory agency the license fee required by this subchapter.
22 A person who fails to apply for renewal of a license on or before the
23 expiration date must pay, in addition to the [~~annual~~] license fee,
24 the late fee provided by Section 12.024 of this code.

25 SECTION 3.10. Section 101.008(a), Agriculture Code, is
26 amended to read as follows:

27 (a) A license expires at the end of the license period

1 established by department rule [~~one year from the date of~~
2 ~~issuance~~].

3 SECTION 3.11. Section 132.024, Agriculture Code, is amended
4 to read as follows:

5 Sec. 132.024. LICENSE TERM. A license issued or renewed
6 under this chapter expires at the end of the license period
7 established by department rule [~~is valid for one year~~].

8 SECTION 3.12. Section 134.015(b), Agriculture Code, is
9 amended to read as follows:

10 (b) A license is valid for the period established by
11 department rule [~~two years after the date of issuance~~]. The
12 department shall renew a license on submission by the licensee of a
13 completed application and a renewal fee, as provided by department
14 rule, unless the department determines that the licensee has
15 violated this chapter or a rule adopted under this chapter.

16 SECTION 3.13. Section 76.113(b), Agriculture Code, is
17 repealed.

18 ARTICLE 4. REGULATION OF WEIGHTS AND MEASURES

19 SECTION 4.01. Section 13.001(a), Agriculture Code, is
20 amended to read as follows:

21 (a) In this chapter:

22 (1) "Commercial weighing or measuring device" means a
23 weighing or measuring device used in a commercial transaction
24 [~~"Weight or measure of a commodity" means the weight or measure of a~~
25 ~~commodity as determined by a weighing or measuring device~~].

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

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

2 (4) [~~(3)~~] "Weighing or measuring device" means[+]

3 [~~(A)~~] a scale[+] or

4 [~~(B)~~] a mechanical or electronic device used to
5 dispense or deliver a commodity by weight, volume, flow rate, or
6 other measure or to compute the charge for a service.

7 (5) "Weight or measure of a commodity" means the
8 weight or measure of a commodity as determined by a weighing or
9 measuring device.

10 SECTION 4.02. Section 13.007, Agriculture Code, is amended
11 by amending Subsection (a) and adding Subsection (e) to read as
12 follows:

13 (a) A person who violates this chapter or a rule adopted
14 under this chapter is liable to the state for a civil penalty of not
15 less than \$250 or more than \$10,000 [~~to exceed \$500~~] for each
16 violation. Each day a violation occurs or continues to occur may be
17 considered a separate violation for purposes of a civil penalty
18 assessment.

19 (e) The department and the attorney general may each recover
20 reasonable expenses incurred in obtaining injunctive relief and
21 civil penalties under this section, including investigative costs,
22 court costs, reasonable attorney's fees, witness fees, and
23 deposition expenses. The expenses recovered by the department may
24 be appropriated only to the department for the administration and
25 enforcement of this chapter. The expenses recovered by the
26 attorney general may be appropriated only to the attorney general.

27 SECTION 4.03. Section 13.021(b), Agriculture Code, is

1 amended to read as follows:

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

7 SECTION 4.04. Section 13.024, Agriculture Code, is amended
8 by amending Subsection (b) and adding Subsection (d) to read as
9 follows:

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

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

19 SECTION 4.05. Section 13.027(b), Agriculture Code, is
20 amended to read as follows:

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

24 SECTION 4.06. Section 13.031(f), Agriculture Code, is
25 amended to read as follows:

26 (f) A person violates this chapter [~~commits an offense~~] if,
27 in violation of this section, the person sells a liquid commodity by

1 other than liquid measure or a commodity that is not liquid by a
2 measure other than length, weight, or numerical count.

3 SECTION 4.07. Section 13.033, Agriculture Code, is amended
4 to read as follows:

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

11 SECTION 4.08. Section 13.034(d), Agriculture Code, is
12 amended to read as follows:

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

17 SECTION 4.09. Section 13.035(b), Agriculture Code, is
18 amended to read as follows:

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

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

23 (2) represents the price or the quantity of a
24 commodity, item, or service sold or offered or exposed for sale in a
25 manner intended or tending to mislead or deceive an actual or
26 prospective customer.

27 SECTION 4.10. Section 13.036, Agriculture Code, is amended

1 to read as follows:

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

5 (1) sells or offers or exposes for sale a quantity of a
6 commodity or service that is less than the quantity the person
7 represents; or

8 (2) as a buyer furnishing the weight or measure of a
9 commodity or service by which the amount of the commodity or service
10 is determined, takes or attempts to take more than the quantity the
11 person represents.

12 SECTION 4.11. Section 13.037(a), Agriculture Code, is
13 amended to read as follows:

14 (a) A person commits an offense if the person or the
15 person's servant or agent knowingly uses an incorrect weighing or
16 measuring device in:

17 (1) buying or selling a commodity;

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

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

22 SECTION 4.12. Section 13.038, Agriculture Code, is amended
23 to read as follows:

24 Sec. 13.038. SALE OF COMMODITY IN VIOLATION OF SUBCHAPTER.

25 A person violates this chapter [~~commits an offense~~] if the person or
26 the person's servant or agent sells or keeps, offers, or exposes for
27 sale a commodity in violation of this subchapter.

1 SECTION 4.13. Section 13.040, Agriculture Code, is amended
2 to read as follows:

3 Sec. 13.040. STOP-SALE ORDER. (a) If the department has
4 reason to believe that a commodity is being sold or kept, offered,
5 or exposed for sale in violation of [~~Section 13.030, 13.031,~~
6 ~~13.032, 13.033, 13.034, 13.035, 13.036, or 13.037 of~~] this chapter
7 or that a commodity or service is being sold or offered for sale by
8 or through the use of a weighing or measuring device that is in
9 violation of this chapter [~~code~~], the department may issue and
10 enforce a written or printed order to stop the sale of the commodity
11 or service. The department shall present the order to the owner or
12 custodian of the commodity or seller of the service. The person
13 receiving the order may not sell the commodity or provide the
14 service until discharged by a court under Subsection (b) [~~of this~~
15 ~~section~~] or until the commissioner finds that the commodity or
16 weighing or measuring device is in compliance with this chapter
17 [~~the applicable section~~].

18 (b) The owner or custodian of a commodity or a person
19 selling or offering for sale a service prohibited from sale by an
20 order of the department is entitled to sue in a court of competent
21 jurisdiction where the commodity is found or the service is being
22 sold or offered for sale for a judgment as to the justification of
23 the order and for the discharge of the commodity or service in
24 accordance with the findings of the court.

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

1 SECTION 4.14. Section 13.041, Agriculture Code, is amended
2 to read as follows:

3 Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under
4 Section [~~13.021, 13.027, 13.029, or each of Sections~~] 13.030,
5 13.032, 13.037, or [through] 13.039 [~~of this code~~] is a Class B ~~[C]~~
6 misdemeanor, unless the person has been previously convicted of an
7 offense under any of those sections, in which case the offense is a
8 Class A misdemeanor.

9 (b) It is a defense to prosecution or to the imposition of a
10 civil or administrative penalty for a violation of [under] Sections
11 13.030-13.038 [~~of this code~~] that a discrepancy between the actual
12 weight or volume at the time of sale to a consumer and the weight
13 marked on the container or a discrepancy between the fill of a
14 container and the capacity of the container is due to unavoidable
15 leakage, shrinkage, evaporation, waste, or causes beyond the
16 control of the seller acting in good faith.

17 SECTION 4.15. Subchapter C, Chapter 13, Agriculture Code,
18 is amended by adding Section 13.1001 to read as follows:

19 Sec. 13.1001. AUTHORITY TO INSPECT. (a) If the department
20 has reason to believe that a weighing or measuring device is being
21 used for a commercial transaction and the device is not registered
22 with the department, the department may inspect the device and the
23 records of the owner, operator, or user of the device that relate to
24 use of the device to determine whether the device is in compliance
25 with this chapter.

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

1 (1) the weighing or measuring device is found in close
2 proximity to commodities being sold or offered for sale by weight or
3 measure and the device appears to be under the control or in the
4 possession of the person selling the commodities or offering the
5 commodities for sale; or

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

9 SECTION 4.16. Section 13.101, Agriculture Code, is amended
10 to read as follows:

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

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

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

24 (b) The department may [shall], to the extent necessary to
25 ensure compliance with the official standards, implement
26 risk-based inspections, respond to complaints, and, as a term of
27 probation, require or perform additional inspection and testing of

1 commercial weighing or measuring devices.

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

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

10 [(e)] The department may inspect and test a commercial
11 weighing or measuring device less frequently than required by
12 Subsection (a):

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

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

17 SECTION 4.17. Section 13.1011, Agriculture Code, is amended
18 to read as follows:

19 Sec. 13.1011. REQUIRED REGISTRATION. (a) Unless a
20 commercial weighing or measuring device is exempt from the
21 application of this section by department rule, a [A] person who
22 owns or operates a commercial weighing or measuring device [for a
23 ~~commercial transaction]~~ shall register the device [annually] with
24 the department before using the device for a commercial
25 transaction.

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

27 (1) be submitted to the department on a form

1 prescribed by the department;

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

4 (3) include the registration fee required under
5 Section 13.1151. [~~The department shall establish a system of~~
6 annual registration and may provide for staggered year-round
7 registration.]

8 (c) A registration under this section is valid for one year
9 unless a different period is established by department rule. The
10 registration must be renewed at or before the end of each
11 registration period and the application for renewal must include
12 the renewal fee required by department rule.

13 (d) If a person fails to register or renew a registration as
14 required by this section and pay the fee required under Section
15 13.1151, the department may assess a late fee against the person,
16 prohibit the operation of the weighing or measuring device, or both
17 assess the fee and prohibit the operation of the device.

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

20 SECTION 4.18. Section 13.111, Agriculture Code, is amended
21 to read as follows:

22 Sec. 13.111. REPAIR OR DESTRUCTION OF INCORRECT COMMERCIAL
23 WEIGHING OR MEASURING DEVICES. (a) If, in the judgment of the
24 department, a commercial weighing or measuring device found to be
25 incorrect is not capable of being repaired, the department may
26 condemn, seize, and destroy the device.

27 (b) If, in the judgment of the department, an incorrect

1 commercial weighing or measuring device is capable of being
2 repaired, the department shall place on the device a tag or other
3 mark with the words "Out of Order." The owner or user of the
4 commercial weighing or measuring device may [~~have it repaired~~
5 ~~within 30 days, but may~~] not use [~~or dispose of~~] it until it is
6 reinspected and released for use by the department or inspected and
7 released for use in any other manner authorized by department rule.

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

12 SECTION 4.19. Section 13.113, Agriculture Code, is amended
13 by amending Subsections (a), (d), and (e) and adding Subsections
14 (f), (g), and (h) to read as follows:

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

22 (d) At the request of a city, the department shall furnish
23 the city with copies of the state's standards or test and approve
24 other standards acquired by the city. The city shall reimburse the
25 state for the actual cost of the standards furnished, plus the costs
26 of freight and certification. All standards furnished to or tested
27 for a city shall be true and correct and[~~r~~] certified by the

1 department[, and stamped with the letter "C"]. The copies used by a
2 city may be of any suitable material or construction that the city
3 requests, subject to approval by the department.

4 (e) The department, or a metrology laboratory certified by
5 the National Institute of Standards and Technology and approved by
6 the department, shall inspect and correct the standards used by a
7 department inspector, other department employee, or individual or
8 business licensed by the department to perform device maintenance
9 activities under Subchapter I [~~private maintenance, repairs, or~~
10 ~~calibration of weighing or measuring devices at least once every~~
11 ~~year~~].

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

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

21 (h) The department shall keep a record of the inspection and
22 character of standards [~~weights and measures~~] inspected under this
23 section [~~subsection~~].

24 SECTION 4.20. Section 13.114, Agriculture Code, is amended
25 to read as follows:

26 Sec. 13.114. TOLERANCES. [~~(a)~~] The department shall
27 establish specifications and tolerances [~~and specifications~~] for

1 commercial weighing or measuring devices used in this state. The
2 specifications and tolerances [~~and specifications~~] shall be
3 similar to those recommended by the National Institute of Standards
4 and Technology.

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

8 SECTION 4.21. Section 13.115(a), Agriculture Code, is
9 amended to read as follows:

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

13 SECTION 4.22. Section 13.117, Agriculture Code, is amended
14 to read as follows:

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

21 SECTION 4.23. Section 13.119, Agriculture Code, is amended
22 to read as follows:

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

27 SECTION 4.24. Section 13.120(b), Agriculture Code, is

1 amended to read as follows:

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

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

6 (2) possesses an incorrect weighing or measuring
7 device; or

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

11 SECTION 4.25. Section 13.122, Agriculture Code, is amended
12 to read as follows:

13 Sec. 13.122. PENALTIES. (a) An offense under Section
14 13.119, 13.120, or [13.114 or each of Sections 13.116 through]
15 13.121 is a Class C misdemeanor, unless the person has been
16 previously convicted of an offense under any of those sections, in
17 which case the offense is a Class B misdemeanor.

18 (b) An offense under Section 13.117 or 13.118 is a Class B
19 misdemeanor, unless the person has been previously convicted of an
20 offense under any of those sections, in which case the offense is a
21 Class A misdemeanor.

22 SECTION 4.26. Chapter 13, Agriculture Code, is amended by
23 adding Subchapter I to read as follows:

24 SUBCHAPTER I. LICENSING OF SERVICE TECHNICIANS AND SERVICE
25 COMPANIES

26 Sec. 13.451. DEFINITIONS. In this subchapter:

27 (1) "License holder" means a person who holds a

1 service company license or a service technician license.

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

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

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

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

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

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

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

24 (1) facilities;

25 (2) inspecting and testing equipment and procedures;

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

1 (4) transportation equipment; and
2 (5) invoices, work orders, and other records related
3 to device maintenance activities.

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

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

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

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

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

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

1 department;

2 (2) is the owner or operator of a commercial weighing
3 or measuring device or an employee of the owner or operator of a
4 commercial weighing or measuring device and the person:

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

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

14 (3) performs device maintenance activities only on a
15 device that is:

16 (A) exempt from the registration requirements of
17 Section 13.1011 under department rules;

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

20 (C) not required to be inspected by other
21 department rules.

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

24 Sec. 13.455. SERVICE TECHNICIAN LICENSE REQUIRED. Unless
25 the individual is exempt from the licensing requirement, an
26 individual may not perform or offer to perform device maintenance
27 activities unless the individual holds a service technician license

1 issued by the department under this subchapter.

2 Sec. 13.456. SERVICE COMPANY LICENSE REQUIRED. (a) Unless
3 the person is exempt from the license requirement, a person may not
4 employ an individual who performs or offers to perform device
5 maintenance activities unless the person holds a service company
6 license issued by the department under this subchapter.

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

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

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

16 and

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

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

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

- 24 (1) provide to the department proof that the applicant
25 has completed an academic, trade, or professional course of
26 instruction approved by the department;

- 27 (2) pass a written test; or

1 (3) pass a practical skills test.

2 Sec. 13.459. SERVICE COMPANY LICENSE REQUIREMENTS. (a) The
3 department shall issue a license to each qualified applicant who
4 applies for a service company license.

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

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

11 (2) meet any other requirements provided by department
12 rule.

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

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

25 Sec. 13.462. LICENSE RENEWAL. A person licensed under this
26 subchapter must periodically renew the person's license. The
27 license expires unless the license holder submits an application

1 for renewal accompanied by the renewal fee set by the department or
2 by the late fee set by the department and meets the requirements for
3 renewal.

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

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

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

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

17 SECTION 4.27. The following provisions of the Agriculture
18 Code are repealed:

- 19 (1) Section 13.1012; and
20 (2) Section 13.115(g).

21 SECTION 4.28. (a) The following provisions of the
22 Agriculture Code are repealed:

- 23 (1) Subchapter F, Chapter 13;
24 (2) Subchapter G, Chapter 13; and
25 (3) Subchapter H, Chapter 13.

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

27 SECTION 4.29. The changes in law made by this article to

1 Sections 13.007, 13.021, 13.027, 13.031, 13.033, 13.034, 13.035,
2 13.036, 13.037, 13.038, 13.041, 13.114, 13.117, 13.119, 13.120,
3 13.122, 13.308, 13.358, and 13.407, Agriculture Code, apply only to
4 an offense or violation committed on or after the effective date of
5 the relevant change in law. An offense or violation committed
6 before the effective date of the change in law is governed by the
7 law in effect on the date the offense or violation was committed,
8 and the former law is continued in effect for that purpose. For
9 purposes of this section, an offense or violation was committed
10 before the effective date of the change in law if any element of the
11 offense or violation occurred before that date.

12 SECTION 4.30. Not later than December 1, 2013, the
13 Department of Agriculture shall adopt rules necessary to implement
14 Subchapter I, Chapter 13, Agriculture Code, as added by this
15 article.

16 SECTION 4.31. Not later than January 1, 2014, the
17 Department of Agriculture shall begin accepting applications for
18 and issuing service technician licenses and service company
19 licenses under Sections 13.458 and 13.459, Agriculture Code, as
20 added by this article.

21 SECTION 4.32. Sections 13.455, 13.456, and 13.464,
22 Agriculture Code, as added by this article, take effect March 1,
23 2014.

24 ARTICLE 5. NOTICE OF COMMODITY PRODUCERS BOARD ELECTIONS

25 SECTION 5.01. Section 41.023(b), Agriculture Code, is
26 amended to read as follows:

27 (b) The commissioner by rule shall prescribe the manner for

1 providing public notice under Subsection (a) [~~of this section shall~~
2 ~~be published in one or more newspapers published and distributed~~
3 ~~within the boundaries described in the petition. The notice shall~~
4 ~~be published for not less than once a week for three consecutive~~
5 ~~weeks, beginning at least 60 days before the date of the election.~~
6 ~~In addition, at least 60 days before the date of the election the~~
7 ~~certified organization shall give direct written notice to each~~
8 ~~county agent in any county within the boundaries described in the~~
9 ~~petition].~~

10 SECTION 5.02. The change in law made by this article to
11 Section 41.023(b), Agriculture Code, applies only to an election
12 ordered on or after the effective date of this Act. An election
13 ordered before the effective date of this Act is governed by the law
14 in effect when the election was ordered, and the former law is
15 continued in effect for that purpose.

16 ARTICLE 6. PLANT PEST QUARANTINES

17 SECTION 6.01. Section 71.006, Agriculture Code, is
18 repealed.

19 ARTICLE 7. DISPOSITION OF LIVESTOCK EXPORT FACILITIES

20 SECTION 7.01. Section 2166.003, Government Code, is amended
21 by adding Subsection (c) to read as follows:

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

26 ARTICLE 8. EFFECTIVE DATE

27 SECTION 8.01. Except as otherwise provided by this Act,

H.B. No. 1494

1 this Act takes effect September 1, 2013.