

1-1 By: King of Zavala (Senate Sponsor - Hinojosa) H.B. No. 1494
1-2 (In the Senate - Received from the House April 29, 2013;
1-3 April 29, 2013, read first time and referred to Committee on
1-4 Agriculture, Rural Affairs, and Homeland Security; May 15, 2013,
1-5 reported adversely, with favorable Committee Substitute by the
1-6 following vote: Yeas 3, Nays 0; May 15, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12			X	
1-13	X			

1-14 COMMITTEE SUBSTITUTE FOR H.B. No. 1494 By: Uresti

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to certain regulatory programs administered by the
1-18 Department of Agriculture; providing penalties; imposing fees.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 ARTICLE 1. ADMINISTRATIVE PENALTIES

1-21 SECTION 1.01. Section 12.020, Agriculture Code, is amended
1-22 by amending Subsections (g), (h), (i), (j), (k), and (o) and adding
1-23 Subsection (j-1) to read as follows:

1-24 (g) Not later than the 20th day after the date on which
1-25 notice is received, the person charged shall ~~may~~ accept the
1-26 determination of the department made under Subsection (e) ~~[of this~~
1-27 ~~section]~~, including the recommended penalty, or make a written
1-28 request for a hearing on the determination.

1-29 (h) If the person charged with the violation accepts the
1-30 determination of the department or fails to timely respond to the
1-31 notice, the commissioner shall issue an order approving the
1-32 determination and ordering the payment of the recommended penalty.

1-33 (i) If the person charged requests a hearing ~~[or fails to~~
1-34 ~~timely respond to the notice]~~, the department shall set a hearing
1-35 and give notice of the hearing. The hearing shall be conducted
1-36 under Section 12.032. The administrative law judge shall make
1-37 findings of fact and conclusions of law and promptly issue to the
1-38 commissioner a proposal for decision as to the occurrence of the
1-39 violation, including a recommendation as to the amount of the
1-40 proposed penalty if a penalty is warranted. Based on the findings
1-41 of fact, conclusions of law, and recommendations of the judge, the
1-42 commissioner by order may find a violation has occurred and may
1-43 assess a penalty or may find that no violation has occurred.

1-44 (j) The department shall give notice of the commissioner's
1-45 order under Subsection (h) or (i) to the person charged. The notice
1-46 shall include:

1-47 (1) the findings of fact and conclusions of law
1-48 separately stated;

1-49 (2) the amount of the penalty ordered, if any;

1-50 (3) a statement of the right of the person charged to
1-51 judicial review of the commissioner's order, if any; and

1-52 (4) other information required by law.

1-53 (j-1) Not later than the 30th day after the date notice is
1-54 provided under Subsection (j), a person ordered to pay a penalty
1-55 under Subsection (h) shall pay the penalty.

1-56 (k) Within the 30-day period immediately following the day
1-57 on which the order under Subsection (i) becomes final under Section
1-58 2001.144, Government Code, the person charged with the penalty
1-59 shall:

1-60 (1) pay the penalty in full;

2-1 (2) pay the amount of the penalty and file a petition
2-2 for judicial review contesting the occurrence of the violation, the
2-3 amount of the penalty, or both the occurrence of the violation and
2-4 the amount of the penalty; or

2-5 (3) without paying the amount of the penalty, file a
2-6 petition for judicial review contesting the occurrence of the
2-7 violation, the amount of the penalty, or both the occurrence of the
2-8 violation and the amount of the penalty.

2-9 (o) Judicial review of the order of the commissioner under
2-10 Subsection (i):

2-11 (1) is instituted by filing a petition as provided by
2-12 Subchapter G, Chapter 2001, Government Code; and

2-13 (2) is under the substantial evidence rule.

2-14 SECTION 1.02. The changes in law made by this article to
2-15 Section 12.020, Agriculture Code, apply only to a violation
2-16 committed on or after the effective date of this Act. A violation
2-17 committed before the effective date of this Act is governed by the
2-18 law in effect on the date the violation was committed, and the
2-19 former law is continued in effect for that purpose. For purposes of
2-20 this section, a violation was committed before the effective date
2-21 of this Act if any element of the violation occurred before that
2-22 date.

2-23 ARTICLE 2. NOTICE REGARDING RENEWAL OF LICENSE OR REGISTRATION

2-24 SECTION 2.01. Section 12.024(f), Agriculture Code, is
2-25 amended to read as follows:

2-26 (f) At least 30 days before the expiration of a person's
2-27 license or registration, the department shall attempt to send
2-28 [~~written~~] notice of the impending license or registration
2-29 expiration to the person at the license holder's or registrant's
2-30 last known e-mail or physical address according to the records of
2-31 the department.

2-32 ARTICLE 3. REGULATION OF WEIGHTS AND MEASURES

2-33 SECTION 3.01. Section 13.001(a), Agriculture Code, is
2-34 amended to read as follows:

2-35 (a) In this chapter:

2-36 (1) "Commercial weighing or measuring device" means a
2-37 weighing or measuring device used in a commercial transaction
2-38 ["Weight or measure of a commodity" means the weight or measure of a
2-39 commodity as determined by a weighing or measuring device].

2-40 (2) "Operator" or "user" means a person in possession
2-41 or control of a weighing or measuring device.

2-42 (3) "Sell" includes barter or exchange.

2-43 (4) [~~(3)~~] "Weighing or measuring device" means [~~+~~

2-44 [~~(A)~~] a scale [~~+~~] or

2-45 [~~(B)~~] a mechanical or electronic device used to
2-46 dispense or deliver a commodity by weight, volume, flow rate, or
2-47 other measure or to compute the charge for a service.

2-48 (5) "Weight or measure of a commodity" means the
2-49 weight or measure of a commodity as determined by a weighing or
2-50 measuring device.

2-51 SECTION 3.02. Section 13.007, Agriculture Code, is amended
2-52 by amending Subsection (a) and adding Subsection (e) to read as
2-53 follows:

2-54 (a) A person who violates Subchapter B or C [~~this chapter~~]
2-55 or a rule adopted under Subchapter B or C [~~this chapter~~] is liable
2-56 to the state for a civil penalty not to exceed \$500 for each
2-57 violation. Each day a violation continues may be considered a
2-58 separate violation for purposes of a civil penalty assessment.

2-59 (e) The department and the attorney general may each recover
2-60 reasonable expenses incurred in obtaining injunctive relief and
2-61 civil penalties under this section, including investigative costs,
2-62 court costs, reasonable attorney's fees, witness fees, and
2-63 deposition expenses. The expenses recovered by the department may
2-64 be appropriated only to the department for the administration and
2-65 enforcement of this chapter. The expenses recovered by the
2-66 attorney general may be appropriated only to the attorney general.

2-67 SECTION 3.03. Section 13.021(b), Agriculture Code, is
2-68 amended to read as follows:

2-69 (b) The department may adopt rules for the purpose of

3-1 administering this subchapter and bringing about uniformity
3-2 between the standards established under this subchapter and the
3-3 standards established by federal law. [~~A person who violates a rule~~
3-4 ~~adopted under this subsection commits an offense.~~]

3-5 SECTION 3.04. Section 13.024, Agriculture Code, is amended
3-6 by amending Subsection (b) and adding Subsection (d) to read as
3-7 follows:

3-8 (b) [~~The barrel consists of 31-1/2 gallons. A hogshead~~
3-9 ~~consists of two barrels.~~] Except as provided by Subsections
3-10 [~~Subsection~~] (c) and (d), [~~of this section~~] all other measures of
3-11 capacity for liquids are derived from the gallon by continual
3-12 division by two, making half gallons, quarts, pints, half pints,
3-13 and gills.

3-14 (d) For purposes of the retail sale of motor fuel only, the
3-15 liquid gallon contains 231 cubic inches without adjustment based on
3-16 the temperature of the liquid.

3-17 SECTION 3.05. Section 13.027(b), Agriculture Code, is
3-18 amended to read as follows:

3-19 (b) A person violates this chapter [~~commits an offense~~] if
3-20 the person fails or refuses to comply with the rules adopted under
3-21 this section.

3-22 SECTION 3.06. Section 13.031(f), Agriculture Code, is
3-23 amended to read as follows:

3-24 (f) A person violates this chapter [~~commits an offense~~] if,
3-25 in violation of this section, the person sells a liquid commodity by
3-26 other than liquid measure or a commodity that is not liquid by a
3-27 measure other than length, weight, or numerical count.

3-28 SECTION 3.07. Section 13.033, Agriculture Code, is amended
3-29 to read as follows:

3-30 Sec. 13.033. SALE OF MILK OR CREAM IN NONSTANDARD
3-31 CONTAINER. A person violates this chapter [~~commits an offense~~] if
3-32 the person sells or keeps, offers, or exposes for sale milk or cream
3-33 in bottles or other containers of a capacity other than one of the
3-34 standard liquid measures provided for by Section 13.024 [~~of this~~
3-35 ~~code~~].

3-36 SECTION 3.08. Section 13.034(d), Agriculture Code, is
3-37 amended to read as follows:

3-38 (d) A person violates this chapter [~~commits an offense~~] if,
3-39 in violation of this section, the person sells or keeps, offers, or
3-40 exposes for sale cheese, meat, or a meat food product by a measure
3-41 other than standard net weight.

3-42 SECTION 3.09. Section 13.035(b), Agriculture Code, is
3-43 amended to read as follows:

3-44 (b) A person violates this chapter [~~commits an offense~~] if
3-45 the person:

3-46 (1) misrepresents the price of a commodity, item, or
3-47 service sold or offered or exposed for sale; or

3-48 (2) represents the price or the quantity of a
3-49 commodity, item, or service sold or offered or exposed for sale in a
3-50 manner intended or tending to mislead or deceive an actual or
3-51 prospective customer.

3-52 SECTION 3.10. Section 13.036, Agriculture Code, is amended
3-53 to read as follows:

3-54 Sec. 13.036. FALSE REPRESENTATION OF COMMODITY QUANTITY. A
3-55 person violates this chapter [~~commits an offense~~] if the person or
3-56 the person's servant or agent:

3-57 (1) sells or offers or exposes for sale a quantity of a
3-58 commodity or service that is less than the quantity the person
3-59 represents; or

3-60 (2) as a buyer furnishing the weight or measure of a
3-61 commodity or service by which the amount of the commodity or service
3-62 is determined, takes or attempts to take more than the quantity the
3-63 person represents.

3-64 SECTION 3.11. Section 13.037(a), Agriculture Code, is
3-65 amended to read as follows:

3-66 (a) A person commits an offense if the person or the
3-67 person's servant or agent knowingly uses an incorrect weighing or
3-68 measuring device in:

3-69 (1) buying or selling a commodity;

4-1 (2) computing a charge for services rendered on the
4-2 basis of weight or measure; or

4-3 (3) determining the weight or measure of a commodity,
4-4 if a charge is made for the determination.

4-5 SECTION 3.12. Section 13.038, Agriculture Code, is amended
4-6 to read as follows:

4-7 Sec. 13.038. SALE OF COMMODITY IN VIOLATION OF SUBCHAPTER.
4-8 A person violates this chapter [~~commits an offense~~] if the person or
4-9 the person's servant or agent sells or keeps, offers, or exposes for
4-10 sale a commodity in violation of this subchapter.

4-11 SECTION 3.13. Section 13.040, Agriculture Code, is amended
4-12 to read as follows:

4-13 Sec. 13.040. STOP-SALE ORDER. (a) If the department has
4-14 reason to believe that a commodity is being sold or kept, offered,
4-15 or exposed for sale in violation of [~~Section 13.030, 13.031,~~
4-16 ~~13.032, 13.033, 13.034, 13.035, 13.036, or 13.037 of~~] this chapter
4-17 or that a commodity or service is being sold or offered for sale by
4-18 or through the use of a weighing or measuring device that is in
4-19 violation of this chapter [~~code~~], the department may issue and
4-20 enforce a written or printed order to stop the sale of the commodity
4-21 or service. The department shall present the order to the owner or
4-22 custodian of the commodity or seller of the service. The person
4-23 receiving the order may not sell the commodity or provide the
4-24 service until discharged by a court under Subsection (b) [~~of this~~
4-25 ~~section~~] or until the commissioner finds that the commodity or
4-26 weighing or measuring device is in compliance with this chapter
4-27 [~~the applicable section~~].

4-28 (b) The owner or custodian of a commodity or a person
4-29 selling or offering for sale a service prohibited from sale by an
4-30 order of the department is entitled to sue in a court of competent
4-31 jurisdiction where the commodity is found or the service is being
4-32 sold or offered for sale for a judgment as to the justification of
4-33 the order and for the discharge of the commodity or service in
4-34 accordance with the findings of the court.

4-35 (c) This section does not limit the right of the department
4-36 to proceed as authorized by other sections of this code
4-37 [~~subchapter~~].

4-38 SECTION 3.14. Section 13.041, Agriculture Code, is amended
4-39 to read as follows:

4-40 Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under
4-41 Section [~~13.021, 13.027, 13.029, or each of Sections~~] 13.030,
4-42 13.032, 13.037, or [through] 13.039 [~~of this code~~] is a Class C
4-43 misdemeanor.

4-44 (b) It is a defense to prosecution or to the imposition of a
4-45 civil or administrative penalty for a violation of [~~under~~] Sections
4-46 13.030-13.038 [~~of this code~~] that a discrepancy between the actual
4-47 weight or volume at the time of sale to a consumer and the weight
4-48 marked on the container or a discrepancy between the fill of a
4-49 container and the capacity of the container is due to unavoidable
4-50 leakage, shrinkage, evaporation, waste, or causes beyond the
4-51 control of the seller acting in good faith.

4-52 SECTION 3.15. Subchapter C, Chapter 13, Agriculture Code,
4-53 is amended by adding Section 13.1001 to read as follows:

4-54 Sec. 13.1001. AUTHORITY TO INSPECT. (a) If the department
4-55 has reason to believe that a weighing or measuring device is being
4-56 used for a commercial transaction and the device is not registered
4-57 with the department, the department may inspect the device and the
4-58 records of the owner, operator, or user of the device that relate to
4-59 use of the device to determine whether the device is in compliance
4-60 with this chapter.

4-61 (b) The department has reason to believe a weighing or
4-62 measuring device is being used for a commercial transaction if:

4-63 (1) the weighing or measuring device is found in close
4-64 proximity to commodities being sold or offered for sale by weight or
4-65 measure and the device appears to be under the control or in the
4-66 possession of the person selling the commodities or offering the
4-67 commodities for sale; or

4-68 (2) other available evidence is sufficient for a
4-69 prudent person to believe that the weighing or measuring device is

5-1 being used for a commercial transaction.

5-2 SECTION 3.16. Section 13.101, Agriculture Code, is amended
5-3 to read as follows:

5-4 Sec. 13.101. [REQUIRED] INSPECTION OF DEVICES. (a) Unless
5-5 a commercial weighing or measuring device is exempt from the
5-6 application of this section by department rule, a commercial
5-7 weighing or measuring device shall be inspected and tested for
5-8 correctness by the department at [A+] least once every four years,
5-9 or more often as required by the department, [a weighing or
5-10 measuring device shall be inspected and tested for correctness by
5-11 the department] if it:

5-12 (1) is kept for sale, sold, or used by a proprietor,
5-13 agent, lessee, or employee in proving the weight or measure,
5-14 including the size, quantity, extent, or area, of any item; or

5-15 (2) is purchased, offered, or submitted by a
5-16 proprietor, agent, lessee, or employee for sale, hire, or award.

5-17 (b) The department may [shall], to the extent necessary to
5-18 ensure compliance with the official standards, implement
5-19 risk-based inspections, respond to complaints, and, as a term of
5-20 probation, require or perform additional inspection and testing of
5-21 commercial weighing or measuring devices.

5-22 (c) A person who uses or keeps for use, or has or offers for
5-23 sale, a commercial weighing or measuring device is responsible for
5-24 having the device inspected and tested as required by this section,
5-25 department rule, or department order imposing a term of probation.

5-26 (d) [Unless the department requires an additional
5-27 inspection, a weighing or measuring device that is inspected and
5-28 found correct by the department may be kept for use, used, kept or
5-29 offered for sale, or sold without further testing.

5-30 [(e)] The department may inspect and test a commercial
5-31 weighing or measuring device less frequently than required by
5-32 Subsection (a):

5-33 (1) to accommodate complaint-based and risk-based
5-34 inspection schedules; or

5-35 (2) in response to an emergency or a limitation in
5-36 department funding.

5-37 SECTION 3.17. Section 13.1011, Agriculture Code, is amended
5-38 to read as follows:

5-39 Sec. 13.1011. REQUIRED REGISTRATION. (a) Unless a
5-40 commercial weighing or measuring device is exempt from the
5-41 application of this section by department rule, a [A] person who
5-42 owns or operates a commercial weighing or measuring device [for a
5-43 commercial transaction] shall register the device [annually] with
5-44 the department before using the device for a commercial
5-45 transaction.

5-46 (b) An application for a device registration must:

5-47 (1) be submitted to the department on a form
5-48 prescribed by the department;

5-49 (2) be accompanied by any other document or form
5-50 required by the department; and

5-51 (3) include the registration fee required under
5-52 Section 13.1151. [The department shall establish a system of
5-53 annual registration and may provide for staggered year-round
5-54 registration.]

5-55 (c) A registration under this section is valid for one year
5-56 unless a different period is established by department rule. The
5-57 registration must be renewed at or before the end of each
5-58 registration period and the application for renewal must include
5-59 the renewal fee required by department rule.

5-60 (d) If a person fails to register or renew a registration as
5-61 required by this section and pay the fee required under Section
5-62 13.1151, the department may assess a late fee against the person,
5-63 prohibit the operation of the weighing or measuring device, or both
5-64 assess the fee and prohibit the operation of the device.

5-65 [(d) The department shall adopt rules for the
5-66 administration of this section and Section 13.1151 of this code.]

5-67 SECTION 3.18. Section 13.111, Agriculture Code, is amended
5-68 to read as follows:

5-69 Sec. 13.111. REPAIR OR DESTRUCTION OF INCORRECT COMMERCIAL

6-1 WEIGHING OR MEASURING DEVICES. (a) If, in the judgment of the
 6-2 department, a commercial weighing or measuring device found to be
 6-3 incorrect is not capable of being repaired, the department may
 6-4 condemn, seize, and destroy the device.

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

6-13 (c) The owner, operator, or user of a commercial weighing or
 6-14 measuring device may not destroy, replace, or otherwise dispose of
 6-15 a device declared to be incorrect or condemned under this section
 6-16 except as provided by department rule.

6-17 SECTION 3.19. Section 13.113, Agriculture Code, is amended
 6-18 by amending Subsections (a), (d), and (e) and adding Subsections
 6-19 (f), (g), and (h) to read as follows:

6-20 (a) The standards of weights and measures maintained by the
 6-21 department [~~received from the United States~~] and certified by the
 6-22 National Institute of Standards and Technology or a metrology
 6-23 laboratory certified by the National Institute of Standards and
 6-24 Technology are the state's standards by which all state and local
 6-25 standards of weights and measures are tried, authenticated, proved,
 6-26 and certified.

6-27 (d) At the request of a city, the department shall furnish
 6-28 the city with copies of the state's standards or test and approve
 6-29 other standards acquired by the city. The city shall reimburse the
 6-30 state for the actual cost of the standards furnished, plus the costs
 6-31 of freight and certification. All standards furnished to or tested
 6-32 for a city shall be true and correct and [~~✓~~] certified by the
 6-33 department [~~, and stamped with the letter "C"~~]. The copies used by a
 6-34 city may be of any suitable material or construction that the city
 6-35 requests, subject to approval by the department.

6-36 (e) The department, or a metrology laboratory certified by
 6-37 the National Institute of Standards and Technology and approved by
 6-38 the department, shall inspect and correct the standards used by a
 6-39 department inspector, other department employee, or individual or
 6-40 business licensed by the department to perform device maintenance
 6-41 activities under Subchapter I [~~private maintenance, repairs, or~~
 6-42 ~~calibration of weighing or measuring devices at least once every~~
 6-43 ~~year~~].

6-44 (f) The department may adopt rules to regulate the frequency
 6-45 and place of inspection and correction of the standards used by an
 6-46 individual or business licensed by the department to perform device
 6-47 maintenance activities under Subchapter I.

6-48 (g) The department may inspect any standard used by an
 6-49 individual or business licensed by the department to perform device
 6-50 maintenance activities described by Subchapter I if the department
 6-51 has reason to believe a standard is no longer in compliance with
 6-52 this chapter.

6-53 (h) The department shall keep a record of the inspection and
 6-54 character of standards [~~weights and measures~~] inspected under this
 6-55 section [~~subsection~~].

6-56 SECTION 3.20. Section 13.114, Agriculture Code, is amended
 6-57 to read as follows:

6-58 Sec. 13.114. TOLERANCES. [~~(a)~~] The department shall
 6-59 establish specifications and tolerances [~~and specifications~~] for
 6-60 commercial weighing or measuring devices used in this state. The
 6-61 specifications and tolerances [~~and specifications~~] shall be
 6-62 similar to those recommended by the National Institute of Standards
 6-63 and Technology.

6-64 [~~(b) A person commits an offense if the person fails or~~
 6-65 ~~refuses to comply with the tolerances and specifications~~
 6-66 ~~established under this section.~~]

6-67 SECTION 3.21. Section 13.115(a), Agriculture Code, is
 6-68 amended to read as follows:

6-69 (a) The department may [~~shall~~] collect a fee [~~in accordance~~

7-1 ~~with this section]~~ for each test of a weighing or measuring device
7-2 required by this subchapter or performed on request of the owner.

7-3 SECTION 3.22. Section 13.117, Agriculture Code, is amended
7-4 to read as follows:

7-5 Sec. 13.117. REFUSING TO ALLOW TEST OF WEIGHING OR
7-6 MEASURING DEVICE. A person commits an offense if the person
7-7 [~~neglects or~~] refuses to allow a weighing or measuring device under
7-8 the person's control or in the person's possession to be inspected,
7-9 tested, or examined by the department, and the inspection, test, or
7-10 examination is required or authorized by this chapter.

7-11 SECTION 3.23. Section 13.119, Agriculture Code, is amended
7-12 to read as follows:

7-13 Sec. 13.119. REMOVAL OF REGISTRATION TAG. A person commits
7-14 an offense if the person removes or obliterates a tag or device
7-15 placed or required by the department to be placed on a weighing or
7-16 measuring device under this chapter.

7-17 SECTION 3.24. Section 13.120(b), Agriculture Code, is
7-18 amended to read as follows:

7-19 (b) A person commits an offense if the person or the
7-20 person's servant or agent knowingly:

7-21 (1) offers or exposes for sale, hire, or award or sells
7-22 an incorrect weighing or measuring device;

7-23 (2) possesses an incorrect weighing or measuring
7-24 device; or

7-25 (3) sells, offers for sale, uses, or possesses for the
7-26 purpose of sale or use a device or instrument to be used to falsify
7-27 or intended to falsify a weight or measure.

7-28 SECTION 3.25. Section 13.122, Agriculture Code, is amended
7-29 to read as follows:

7-30 Sec. 13.122. PENALTIES. An offense under [~~Section 13.114~~
7-31 ~~or~~] each of Sections 13.117 [~~13.116~~] through 13.121 is a Class C
7-32 misdemeanor.

7-33 SECTION 3.26. Chapter 13, Agriculture Code, is amended by
7-34 adding Subchapter I to read as follows:

7-35 SUBCHAPTER I. LICENSING OF SERVICE TECHNICIANS AND SERVICE
7-36 COMPANIES

7-37 Sec. 13.451. DEFINITIONS. In this subchapter:

7-38 (1) "License holder" means a person who holds a
7-39 service company license or a service technician license.

7-40 (2) "Service company" means a person who holds a
7-41 service company license issued by the department under this
7-42 subchapter.

7-43 (3) "Service technician" means an individual who holds
7-44 a service technician license issued by the department under this
7-45 subchapter.

7-46 Sec. 13.452. DEVICE MAINTENANCE ACTIVITIES. A person
7-47 performs device maintenance activities if the person or the
7-48 person's employee:

7-49 (1) places a commercial weighing or measuring device
7-50 in service;

7-51 (2) installs, calibrates, or repairs a commercial
7-52 weighing or measuring device; or

7-53 (3) removes an out-of-order tag, stop-sale order,
7-54 security seal, lock, condemnation notice, or other form of use
7-55 prohibition placed on a weighing or measuring device by the
7-56 department.

7-57 Sec. 13.453. POWERS AND DUTIES OF DEPARTMENT. (a) To
7-58 verify compliance with licensing requirements, trade practices,
7-59 department rules, and this chapter, the department may periodically
7-60 or in response to a complaint or previous violation inspect an
7-61 applicant's or license holder's:

7-62 (1) facilities;

7-63 (2) inspecting and testing equipment and procedures;

7-64 (3) repair and calibration equipment, standards, and
7-65 procedures;

7-66 (4) transportation equipment; and

7-67 (5) invoices, work orders, and other records related
7-68 to device maintenance activities.

7-69 (b) The department may periodically or in response to a

8-1 complaint or previous violation monitor and inspect or test
 8-2 weighing or measuring devices that have been inspected and tested
 8-3 by a license holder and any standards used by the license holder
 8-4 during an inspection or test.

8-5 (c) The department by rule may adopt additional
 8-6 requirements for the issuance of a license and for the denial of an
 8-7 application for a license or renewal of a license. Rules adopted by
 8-8 the department under this subsection must be designed to protect
 8-9 the public health, safety, and welfare and the proper inspection,
 8-10 testing, and operation of commercial weighing or measuring devices.

8-11 (d) The department may adopt other rules necessary for the
 8-12 regulation of device maintenance activities, for the proper
 8-13 operation of commercial weighing or measuring devices, and to
 8-14 protect the health, safety, and welfare of the public and license
 8-15 holders.

8-16 (e) The department may specify the date, time, and place for
 8-17 any inspection authorized by this section.

8-18 Sec. 13.454. EXEMPTIONS FROM LICENSE REQUIREMENTS. (a) A
 8-19 person is not required to hold a license issued under this
 8-20 subchapter if the person:

8-21 (1) is a department employee who is performing device
 8-22 maintenance activities in the scope of the person's duties for the
 8-23 department;

8-24 (2) is the owner or operator of a commercial weighing
 8-25 or measuring device or an employee of the owner or operator of a
 8-26 commercial weighing or measuring device and the person:

8-27 (A) completely removes the commercial weighing
 8-28 or measuring device from the location at which the device was
 8-29 installed, including a device subject to an out-of-order tag,
 8-30 stop-sale order, security seal, lock, condemnation notice, or other
 8-31 item placed on the device by the department to prohibit use of the
 8-32 device; and

8-33 (B) notifies the department of the device's
 8-34 removal not later than the 10th day after the date the device was
 8-35 removed in the manner provided by department rule; or

8-36 (3) performs device maintenance activities only on a
 8-37 device that is:

8-38 (A) exempt from the registration requirements of
 8-39 Section 13.1011 under department rules;

8-40 (B) exempt from the inspection requirements of
 8-41 Section 13.101 under department rules; and

8-42 (C) not required to be inspected by other
 8-43 department rules.

8-44 (b) The department is not required to hold a license issued
 8-45 under this subchapter.

8-46 Sec. 13.455. SERVICE TECHNICIAN LICENSE REQUIRED. Unless
 8-47 the individual is exempt from the licensing requirement, an
 8-48 individual may not perform or offer to perform device maintenance
 8-49 activities unless the individual holds a service technician license
 8-50 issued by the department under this subchapter.

8-51 Sec. 13.456. SERVICE COMPANY LICENSE REQUIRED. (a) Unless
 8-52 the person is exempt from the license requirement, a person may not
 8-53 employ an individual who performs or offers to perform device
 8-54 maintenance activities unless the person holds a service company
 8-55 license issued by the department under this subchapter.

8-56 (b) Unless the individual is exempt from the licensing
 8-57 requirement, an individual may not perform or offer to perform
 8-58 device maintenance activities as a sole proprietor unless the
 8-59 individual holds a service technician license and a service company
 8-60 license issued by the department under this subchapter.

8-61 Sec. 13.457. APPLICATION FOR LICENSE. An applicant for a
 8-62 license under this subchapter must submit to the department:

8-63 (1) an application form prescribed by the department;

8-64 (2) any other documents required by the department;

8-65 and

8-66 (3) a fee in an amount set by the department.

8-67 Sec. 13.458. SERVICE TECHNICIAN LICENSE REQUIREMENTS. (a)
 8-68 The department shall issue a license to each qualified applicant
 8-69 who applies for a service technician license.

9-1 (b) The department by rule may require an applicant for the
9-2 issuance or renewal of a service technician license to meet one or
9-3 more of the following requirements:

9-4 (1) provide to the department proof that the applicant
9-5 has completed an academic, trade, or professional course of
9-6 instruction approved by the department;

9-7 (2) pass a written test; or

9-8 (3) pass a practical skills test.

9-9 Sec. 13.459. SERVICE COMPANY LICENSE REQUIREMENTS. (a) The
9-10 department shall issue a license to each qualified applicant who
9-11 applies for a service company license.

9-12 (b) An applicant for the issuance or renewal of a license
9-13 under this section must:

9-14 (1) submit to the department a certificate of
9-15 insurance evidencing that the applicant has an insurance policy
9-16 that meets the requirements of Section 13.460 effective for the
9-17 period for which the license is to be issued or renewed; and

9-18 (2) meet any other requirements provided by department
9-19 rule.

9-20 Sec. 13.460. INSURANCE POLICY REQUIRED FOR SERVICE COMPANY.
9-21 A service company shall maintain at all times while the service
9-22 company performs device maintenance activities a current effective
9-23 operations liability insurance policy issued by an insurance
9-24 company authorized to do business in this state or by a surplus
9-25 lines insurer that meets the requirements of Chapter 981, Insurance
9-26 Code, and rules adopted by the commissioner of insurance in an
9-27 amount set by the department and based on the type of licensed
9-28 activities to be performed.

9-29 Sec. 13.461. TERM OF LICENSE. A license issued under this
9-30 subchapter is valid for one year unless a different term is
9-31 established by department rule.

9-32 Sec. 13.462. LICENSE RENEWAL. A person licensed under this
9-33 subchapter must periodically renew the person's license. The
9-34 license expires unless the license holder submits an application
9-35 for renewal accompanied by the renewal fee set by the department or
9-36 by the late fee set by the department and meets the requirements for
9-37 renewal.

9-38 Sec. 13.463. PRACTICE BY LICENSE HOLDER. (a) A license
9-39 holder shall perform device maintenance activities in compliance
9-40 with department rules.

9-41 (b) A license holder may use only equipment approved by the
9-42 department, as provided by department rules, when performing device
9-43 maintenance activities.

9-44 Sec. 13.464. CRIMINAL PENALTY. (a) A person commits an
9-45 offense if the person violates Section 13.455 or 13.456 or causes
9-46 another person to violate Section 13.455 or 13.456.

9-47 (b) An offense under Subsection (a) is a Class B
9-48 misdemeanor, unless the person has been previously convicted of an
9-49 offense under this section, in which case the offense is a Class A
9-50 misdemeanor.

9-51 SECTION 3.27. The following provisions of the Agriculture
9-52 Code are repealed:

9-53 (1) Section 13.1012; and

9-54 (2) Section 13.115(g).

9-55 SECTION 3.28. (a) The following provisions of the
9-56 Agriculture Code are repealed:

9-57 (1) Subchapter F, Chapter 13;

9-58 (2) Subchapter G, Chapter 13; and

9-59 (3) Subchapter H, Chapter 13.

9-60 (b) This section takes effect March 1, 2014.

9-61 SECTION 3.29. The changes in law made by this article to
9-62 Sections 13.007, 13.021, 13.027, 13.031, 13.033, 13.034, 13.035,
9-63 13.036, 13.037, 13.038, 13.041, 13.114, 13.117, 13.119, 13.120,
9-64 13.122, 13.308, 13.358, and 13.407, Agriculture Code, apply only to
9-65 an offense or violation committed on or after the effective date of
9-66 the relevant change in law. An offense or violation committed
9-67 before the effective date of the change in law is governed by the
9-68 law in effect on the date the offense or violation was committed,
9-69 and the former law is continued in effect for that purpose. For

10-1 purposes of this section, an offense or violation was committed
10-2 before the effective date of the change in law if any element of the
10-3 offense or violation occurred before that date.

10-4 SECTION 3.30. Not later than December 1, 2013, the
10-5 Department of Agriculture shall adopt rules necessary to implement
10-6 Subchapter I, Chapter 13, Agriculture Code, as added by this
10-7 article.

10-8 SECTION 3.31. Not later than January 1, 2014, the
10-9 Department of Agriculture shall begin accepting applications for
10-10 and issuing service technician licenses and service company
10-11 licenses under Sections 13.458 and 13.459, Agriculture Code, as
10-12 added by this article.

10-13 SECTION 3.32. Sections 13.455, 13.456, and 13.464,
10-14 Agriculture Code, as added by this article, take effect March 1,
10-15 2014.

10-16 ARTICLE 4. NOTICE OF COMMODITY PRODUCERS BOARD ELECTIONS

10-17 SECTION 4.01. Section 41.023(b), Agriculture Code, is
10-18 amended to read as follows:

10-19 (b) The commissioner by rule shall prescribe the manner for
10-20 providing public notice under Subsection (a) ~~[of this section shall~~
10-21 ~~be published in one or more newspapers published and distributed~~
10-22 ~~within the boundaries described in the petition. The notice shall~~
10-23 ~~be published for not less than once a week for three consecutive~~
10-24 ~~weeks, beginning at least 60 days before the date of the election.~~
10-25 ~~In addition, at least 60 days before the date of the election the~~
10-26 ~~certified organization shall give direct written notice to each~~
10-27 ~~county agent in any county within the boundaries described in the~~
10-28 ~~petition].~~

10-29 SECTION 4.02. The change in law made by this article to
10-30 Section 41.023(b), Agriculture Code, applies only to an election
10-31 ordered on or after the effective date of this Act. An election
10-32 ordered before the effective date of this Act is governed by the law
10-33 in effect when the election was ordered, and the former law is
10-34 continued in effect for that purpose.

10-35 ARTICLE 5. DISPOSITION OF LIVESTOCK EXPORT FACILITIES

10-36 SECTION 5.01. Section 2166.003, Government Code, is amended
10-37 by adding Subsection (c) to read as follows:

10-38 (c) This chapter and Chapter 2175 do not apply to the
10-39 disposition, sale, or transfer of a pen, shed, or ancillary
10-40 building constructed by and for the Department of Agriculture for
10-41 the processing of livestock before export.

10-42 ARTICLE 6. EFFECTIVE DATE

10-43 SECTION 6.01. Except as otherwise provided by this Act,
10-44 this Act takes effect September 1, 2013.

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