

**House Bill 1494**  
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ARTICLE 1. ADMINISTRATIVE PENALTIES

Same as House version.

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:

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

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

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- (1) the findings of fact and conclusions of law separately stated;
  - (2) the amount of the penalty ordered, if any;
  - (3) a statement of the right of the person charged to judicial review of the commissioner's order, if any; and
  - (4) other information required by law.
- (j-1) Not later than the 30th day after the date notice is provided under Subsection (j), a person ordered to pay a penalty under Subsection (h) shall pay the penalty.
- (k) Within the 30-day period immediately following the day on which the order under Subsection (i) becomes final under Section 2001.144, Government Code, the person charged with the penalty shall:
- (1) pay the penalty in full;
  - (2) pay the amount of the penalty and file a 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; or
  - (3) without paying the amount of the penalty, file a 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

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SECTION 1.02. Same as House version.

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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. CEASE AND DESIST ORDERS

No equivalent provision.

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

No equivalent provision.

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

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

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that the order was an abuse of the department's discretion.

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

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

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

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

(3) both injunctive relief and a civil penalty.

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

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

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

Sec. 12A.004. PENALTY FOR VIOLATING CEASE AND DESIST ORDER. (a) A person commits an offense if the

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person violates a cease and desist order issued under Section 12A.002.

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

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

SECTION 2.03. The changes in law made by this article to Section 12A.002, 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.

No equivalent provision.

ARTICLE 3. TERM AND RENEWAL OF LICENSES

No equivalent provision.

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

No equivalent provision.

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

(b) The department by rule shall adopt a system under which

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registrations or licenses required by the department, including licenses issued under Chapter 1951, Occupations Code, expire on various dates during the year. The department may increase or decrease the term of an initial or renewal license or registration so that all licenses held by a person or a group of license holders expire on the same date. For the period in which the registration or license expiration date is changed, registration or license fees shall be prorated on a monthly basis so that each registrant or licensee pays only that portion of the fee that is allocable to the number of months during which the registration or license is valid. On the next renewal of the registration or license, the total renewal fee is payable.

**No equivalent provision.**

SECTION 3.02. 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.

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

(b) An applicant must file a separate application for each license, renewal, or amendment and shall accompany each

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ARTICLE 2. NOTICE REGARDING RENEWAL OF  
LICENSE OR REGISTRATION

SECTION 2.01. Same as House version.

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application for a license or renewal with a ~~an annual~~ license fee, as provided by department rule. The department shall prescribe the information to be contained in the application. A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024.

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

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

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

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

(c) Registrations under this section expire at the end of the registration period established by department rule ~~[one year after issuance]~~. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

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

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

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

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

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

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

(b) A person shall apply for an original or renewal commercial applicator license on forms prescribed by the regulatory agency. The application shall include information as required by rule of the head of the agency and must be accompanied by a ~~an annual~~ license fee, as fixed by the head of the agency.

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

(b) A person shall apply for an original or renewal

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noncommercial applicator license on forms prescribed by the regulatory agency. The applicant shall include with the application a ~~an annual~~ license fee, as fixed by the governing body of or the head of the regulatory agency. The governing body of or the head of the regulatory agency may set other fees as necessary to defray the costs of administering a pesticide applicator certification program.

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

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

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

No equivalent provision.

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

(a) A license expires at the end of the license period established by department rule ~~[one year from the date of issuance]~~.

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SECTION 3.11. Section 132.024, Agriculture Code, is

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amended to read as follows:

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

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

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

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

ARTICLE 4. REGULATION OF WEIGHTS AND MEASURES

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

(a) In this chapter:

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

No equivalent provision.

No equivalent provision.

ARTICLE 3. Same as House version.

SECTION 3.01. Same as House version.

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~~weighing or measuring device~~].

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

(3) "Sell" includes barter or exchange.

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

~~(A)] a scale[;~~ or

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

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

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

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

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

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

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

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

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SECTION 4.03. Section 13.021(b), Agriculture Code, is amended to read as follows:

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

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

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

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

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

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

SECTION 3.03. Same as House version.

SECTION 3.04. Same as House version.

SECTION 3.05. Same as House version.

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

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

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

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

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

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

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

(b) A person violates this chapter ~~[commits an offense]~~ if the person:  
(1) misrepresents the price of a commodity, item, or service sold or offered or exposed for sale; or

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SECTION 3.06. Same as House version.

SECTION 3.07. Same as House version.

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

SECTION 4.10. Section 13.036, Agriculture Code, is amended to read as follows:

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

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

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

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

- (1) buying or selling a commodity;
- (2) computing a charge for services rendered on the basis of weight or measure; or
- (3) determining the weight or measure of a commodity, if a charge is made for the determination.

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

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

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

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

(b) The owner or custodian of a commodity or a person selling or offering for sale a service prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the commodity is found or the service is being sold or offered for sale for a judgment as to

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the justification of the order and for the discharge of the commodity or service in accordance with the findings of the court.

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

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

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

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

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

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

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

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

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

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may inspect the device and the records of the owner, operator, or user of the device that relate to use of the device to determine whether the device is in compliance with this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(b) An application for a device registration must:

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

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

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

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

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

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

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

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

SECTION 3.18. Same as House version.

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

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

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

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

(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~~;~~ certified by the department~~[- and stamped with the letter "C"]~~. The copies

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SECTION 3.19. Same as House version.

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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 section [subsection].

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

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

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SECTION 3.20. Same as House version.

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

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

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

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

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

SECTION 4.23. Section 13.119, Agriculture Code, is amended 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.

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SECTION 3.21. Same as House version.

SECTION 3.22. Same as House version.

SECTION 3.23. Same as House version.

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SECTION 4.24. 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 4.25. Section 13.122, Agriculture Code, is amended to read as follows:

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

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

SECTION 4.26. 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

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SECTION 3.24. Same as House version.

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. Same as House version.

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company license or a service technician license.

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

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

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

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

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

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

Sec. 13.453. POWERS AND DUTIES OF DEPARTMENT.

(a) To verify compliance with licensing requirements, trade practices, department rules, and this chapter, the department may periodically or in response to a complaint or previous violation inspect an applicant's or license holder's:

(1) facilities;

(2) inspecting and testing equipment and procedures;

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

(4) transportation equipment; and

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

(b) The department may periodically or in response to a complaint or previous violation monitor and inspect or test weighing or measuring devices that have been inspected and



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tested by a license holder and any standards used by the license holder during an inspection or test.

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

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

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

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

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

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

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

(B) notifies the department of the device's removal not later

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than the 10th day after the date the device was removed in the manner provided by department rule; or

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

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

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

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

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

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

Sec. 13.456. SERVICE COMPANY LICENSE REQUIRED.

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

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

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

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- (1) an application form prescribed by the department;
- (2) any other documents required by the department; and
- (3) a fee in an amount set by the department.

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

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

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

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

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

- (1) submit to the department a certificate of insurance evidencing that the applicant has an insurance policy that meets the requirements of Section 13.460 effective for the period for which the license is to be issued or renewed; and
- (2) meet any other requirements provided by department rule.

Sec. 13.460. INSURANCE POLICY REQUIRED FOR SERVICE COMPANY. A service company shall maintain at all times while the service company performs device maintenance activities a current effective operations liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that

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meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance in an amount set by the department and based on the type of licensed activities to be performed.

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

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

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

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

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

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

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

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

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SECTION 3.27. Same as House version.

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

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

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

SECTION 4.29. The changes in law made by this article to Sections 13.007, 13.021, 13.027, 13.031, 13.033, 13.034, 13.035, 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 4.30. 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 3.28. Same as House version.

SECTION 3.29. Same as House version.

SECTION 3.30. Same as House version.

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SECTION 4.31. 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 4.32. Sections 13.455, 13.456, and 13.464, Agriculture Code, as added by this article, take effect March 1, 2014.

ARTICLE 5. NOTICE OF COMMODITY PRODUCERS BOARD ELECTIONS

SECTION 5.01. 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 5.02. The change in law made by this article to Section 41.023(b), Agriculture Code, applies only to an

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SECTION 3.31. Same as House version.

SECTION 3.2. Same as House version.

ARTICLE 4. Same as House version.

SECTION 4.01. Same as House version.

SECTION 4.02. Same as House version.

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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. PLANT PEST QUARANTINES

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

ARTICLE 7. DISPOSITION OF LIVESTOCK EXPORT FACILITIES

SECTION 7.01. 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.

No equivalent provision.

No equivalent provision.

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No equivalent provision.

No equivalent provision.

ARTICLE 5. Same as House version.

SECTION 5.01. Same as House version.

ARTICLE \_\_. REGULATION OF CITRUS PEST AND DISEASE MANAGEMENT [FA1]

SECTION \_\_.01. Section 80.003(6), Agriculture Code, is amended to read as follows:

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(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. [FA1]

No equivalent provision.

SECTION \_\_.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. [FA1]

No equivalent provision.

SECTION \_\_.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. [FA1]



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No equivalent provision.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2013.

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SECTION \_\_.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. [FA1]

ARTICLE 6. Same as House version.

SECTION 6.01. Same as House version.

CONFERENCE