

By: Estes, et al.
(Phillips)

S.B. No. 1099

A BILL TO BE ENTITLED

AN ACT

relating to the operation and functions of the Texas Grain Producer Indemnity Board.

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

SECTION 1. Section 41.102, Agriculture Code, is amended to read as follows:

Sec. 41.102. SUSPENSION OR REVOCATION OF LICENSE. In addition to other remedies provided by law, a violation of any provision of Subchapter B, C, D, E, or I [~~Subchapters B-E~~] of this chapter is grounds for suspension or revocation of any license or permit issued by the commissioner. The suspension or revocation shall be conducted in accordance with the procedures provided by law for suspension or revocation on the basis of other grounds.

SECTION 2. Section 41.201, Agriculture Code, is amended by adding Subdivisions (3-a) and (8) to read as follows:

(3-a) "Fund" means the grain producer indemnity fund.

(8) "Reinsurance" means an insurance product purchased by the board to reduce the financial risk and capital balance associated with the function of the board.

SECTION 3. Subchapter I, Chapter 41, Agriculture Code, is amended by adding Section 41.2035 to read as follows:

Sec. 41.2035. FUND. (a) The grain producer indemnity fund is a trust fund outside the state treasury to be held and administered by the board, without appropriation, for the payment

1 of claims against a grain buyer who has experienced a financial
2 failure.

3 (b) The board shall deposit assessments remitted under
4 Section 41.206 in the fund.

5 (c) Interest or other income from investment of the fund
6 shall be deposited to the credit of the fund.

7 (d) As a part of the annual budget proposal procedure
8 described by Section 41.059, the board shall set a minimum balance
9 for the fund to be held in reserve to pay for administrative costs
10 in the event that claims against the fund exceed the total balance
11 of the fund. The board shall post the minimum balance set under
12 this subsection on the board's Internet website.

13 SECTION 4. The heading to Section 41.205, Agriculture Code,
14 is amended to read as follows:

15 Sec. 41.205. POWERS AND DUTIES OF BOARD.

16 SECTION 5. Section 41.205, Agriculture Code, is amended by
17 adding Subsection (f) to read as follows:

18 (f) The board may borrow money, with the approval of the
19 commissioner, as necessary to implement this subchapter.

20 SECTION 6. Section 41.206(a), Agriculture Code, is amended
21 to read as follows:

22 (a) Except as provided by this subsection, a grain buyer
23 shall collect assessments in the manner prescribed for processors
24 under Section 41.081. The assessment shall be collected at the
25 first point of sale. Section 41.081(b) does not apply to the
26 collection of assessments under this section.

27 SECTION 7. Sections 41.209(b) and (f), Agriculture Code,

1 are amended to read as follows:

2 (b) In determining the amount due to a grain producer under
3 Subsection (a) for a loss of grain, the board may award the grain
4 producer 85 [~~not more than 90~~] percent of:

5 (1) the value of the grain on the claim initiation
6 date, as determined by board rule, if the grain has not been sold;
7 or

8 (2) the contract price of the grain, if the grain has
9 been sold.

10 (f) The board may deny a grain producer's claim in whole or
11 in part:

12 (1) if the grain producer has failed to pay
13 assessments [~~for the current growing season~~] under Section [41.206](#);

14 (2) if the applicable grain buyer has a history of
15 failure to collect assessments as required by Section [41.206](#);

16 (3) if the documentation submitted by the grain
17 producer in support of the grain producer's claim is incomplete,
18 false, or fraudulent;

19 (4) to prevent the grain producer from recovering from
20 multiple payments an amount greater than the amount the grain
21 producer lost due to the financial failure of a grain buyer or to
22 the grain buyer's refusal, failure, or inability to deliver to the
23 grain producer grain held by the grain buyer as a bailment,
24 including:

25 (A) payments made by the board;

26 (B) payments made from a grain warehouse
27 operator's bond;

1 (C) payments ordered by a bankruptcy court; or

2 (D) a recovery under a state or federal crop
3 insurance policy or program; or

4 (5) if documentation submitted by the grain producer
5 demonstrates that deferred payment on sold grain was beyond normal
6 and customary practices.

7 SECTION 8. Section 41.210, Agriculture Code, is amended to
8 read as follows:

9 Sec. 41.210. REIMBURSEMENT OF BOARD BY GRAIN BUYER;
10 SUBROGATION OF RIGHTS; REINSURANCE. (a) If the board pays a claim
11 against a grain buyer, the board is subrogated to the extent of the
12 amount paid to a grain producer by the board to all rights of the
13 grain producer against[+]

14 [~~(1)~~] the grain buyer[~~, to the extent of the amount~~
15 ~~paid to a grain producer by the board,~~] and

16 [~~(2)~~] any other entity from which the grain producer
17 is entitled to a payment for the loss giving rise to the grain
18 producer's claim under this subchapter.

19 (b) Funds recovered under this section shall be deposited
20 with the depository bank selected by the board under Section
21 41.060.

22 (c) The board may purchase reinsurance policies to mitigate
23 the board's financial risks.

24 SECTION 9. Section 41.211, Agriculture Code, is amended to
25 read as follows:

26 Sec. 41.211. RULES. Except as provided by Section 41.212,
27 the board may adopt rules as necessary to implement this

1 subchapter, including rules relating to:

- 2 (1) notice and collection of assessments;
- 3 (2) the orderly distribution of refunds;
- 4 (3) the management of the board's budget;
- 5 (4) the use of insurance and reinsurance products;
- 6 (5) [~~3~~] administration of the board's duties;
- 7 (6) [~~4~~] the statewide referendum conducted under
- 8 Section 41.212;
- 9 (7) [~~5~~] the selection of agents, designees, or
- 10 devices to carry out the intent of the board; and
- 11 (8) [~~6~~] guidelines for industry practices that do or
- 12 do not qualify for indemnification by the board.

13 SECTION 10. Section 41.212(e), Agriculture Code, is amended
14 to read as follows:

15 (e) A referendum is approved if a majority of votes cast are
16 in favor of the referendum [~~meets the requirements of Section~~
17 41.031].

18 SECTION 11. Subchapter I, Chapter 41, Agriculture Code, is
19 amended by adding Section 41.2145 to read as follows:

20 Sec. 41.2145. REFUND OF ASSESSMENTS. (a) A grain producer
21 who has paid an assessment under Section 41.206 may be eligible for
22 a refund from excess money in the indemnity fund as provided by this
23 section.

24 (b) As a part of the annual budget proposal procedure
25 described by Section 41.059, the board shall review the budget for
26 the next year and the board's current financial status. Based on
27 that review, the board shall determine whether funds are available

1 in excess of the minimum fund balance to issue refunds to grain
2 producers who paid an assessment under Section 41.206.

3 (c) The board shall adopt rules regarding the procedure for
4 determining the amount of a grain producer's refund and the timing,
5 method, and order of refund issuance.

6 SECTION 12. Subchapter I, Chapter 41, Agriculture Code, is
7 amended by adding Section 41.216 to read as follows:

8 Sec. 41.216. ADMINISTRATIVE REVIEW. (a) The board by rule
9 shall establish an administrative review process to informally
10 review and resolve claims arising from an action of the board under
11 this subchapter. The board shall adopt rules:

12 (1) designating which board actions are subject to
13 review under this section; and

14 (2) outlining available remedial actions.

15 (b) A person may appeal an administrative review decision
16 made by the board under Subsection (a) to the commissioner.

17 (c) A person may appeal a decision of the commissioner in
18 the manner provided for a contested case under Chapter 2001,
19 Government Code.

20 (d) This section does not waive this state's sovereign
21 immunity.

22 SECTION 13. Section 41.214, Agriculture Code, is repealed.

23 SECTION 14. (a) The change in law made by this Act to
24 Section 41.102, Agriculture Code, applies only to conduct that
25 occurs on or after the effective date of this Act. Conduct that
26 occurs before the effective date of this Act is governed by the law
27 in effect on the date the conduct occurs, and the former law is

1 continued in effect for that purpose.

2 (b) The repeal of Section 41.214, Agriculture Code, by this
3 Act applies only to an application for a refund submitted on or
4 after the effective date of this Act. An application for a refund
5 submitted before the effective date of this Act is governed by the
6 law in effect on the date the application was submitted, and the
7 former law is continued in effect for that purpose.

8 SECTION 15. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2015.