AGRICULTURE CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the agriculture law more accessible and understandable, by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1981, 67th Leg., p. 1015, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1981, 67th Leg., p. 1015, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 66, eff. Sept. 1, 1985.

Sec. 1.003. DEFINITIONS. In this code:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Department" means the Department of Agriculture.

(3) "Livestock" means cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, including elk and elk hybrids, and hogs, unless otherwise defined.

Acts 1981, 67th Leg., p. 1015, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2003, 78th Leg., ch. 604, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1094 (H.B. 3300), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 165 (H.B. 375), Sec. 1, eff. May 27, 2009.

CHAPTER 2. STATE AGRICULTURAL POLICY

Sec. 2.001. DEFINITIONS. In this chapter, "agriculture" means:

(1) the cultivation of the soil to produce crops;

(2) horticulture, floriculture, or viticulture;

(3) forestry; or

(4) the raising or keeping of livestock or poultry.

Added by Acts 1999, 76th Leg., ch. 301, Sec. 2, eff. May 29, 1999.

Sec. 2.002. FINDINGS. The legislature finds that:

(1) agriculture has been a critical element in the economic, cultural, and historical development of this state;

(2) the impact of agriculture in this state is declining, due to urbanization, economic changes, and changes in agriculture;

(3) the effects of those changes are not limited to rural areas and the agricultural community but affect citizens throughout the state, including those in urban areas;

(4) agriculture is a vital component of a diversified state economy and creates numerous businesses and job opportunities;

(5) agriculture is directly and substantially affected by factors beyond the control of the industry, including adverse weather conditions and changes in world commodity markets;

(6) agriculture renews the natural resources of this state through the annual production of crops and livestock; and

(7) to ensure that agriculture remains a vital force in this state, the state must assess the condition of agriculture and the role of state government and develop an agricultural policy to guide governmental actions.

Added by Acts 1999, 76th Leg., ch. 301, Sec. 2, eff. May 29, 1999.

Sec. 2.003. POLICY. (a) The agricultural policy of this state must consider and address:

(1) water availability issues, including planning for water supplies and drought preparedness and response, by ensuring that a high priority is assigned to the agricultural use of water;

(2) transportation issues, by ensuring an efficient and well-maintained farm-to-market road system and intermodal transportation to provide adequate transportation for agricultural products at competitive rates;

(3) state regulatory issues, by ensuring the efficiency and profitability of agricultural enterprises while at the same time protecting the health, safety, and welfare of agricultural workers and citizens of this state;

(4) state tax policy, by encouraging tax policy that promotes the agriculture industry, including production and processing;

(5) the availability of capital, including state loans or grants authorized by Section 52-a, Article III, Texas Constitution, by facilitating access to capital through loans and grants authorized by the Texas Constitution for agricultural producers who have established or intend to establish agricultural operations in Texas;

(6) the promotion of Texas agricultural products, by promoting the orderly and efficient marketing of agricultural commodities and enhancing and expanding sales of Texas raw and processed agricultural products in local, domestic, and foreign markets;

(7) eradication, control, or exclusion of:

(A) injurious pests and diseases that affect crops and livestock; and

(B) noxious plant and brush species;

(8) research and education efforts, including financial risk management, consumer education, and education in the public schools, by encouraging promotional and educational programs involving all segments of agriculture and maintaining a solid foundation of stable and long-term support for food and agricultural research while improving accountability and gathering public input concerning research;

(9) promotion of efficient utilization of soil and water resources, by encouraging efforts to sustain the long-term productivity of landowners by conserving and protecting the basic

resources of agriculture, including soil, water, and air, while working within federal mandates relating to natural resources;

(10) rural economic and infrastructure development, by enhancing, protecting, and encouraging the production of food and other agricultural products;

(11) protection of property rights and the right to farm, by promoting and protecting agricultural activities that are established before nonagricultural activities located near the agricultural activities and are reasonable and consistent with good agricultural practices;

(12) preservation of farmland, ranchland, timberland, and other land devoted to agricultural purposes, by encouraging the development and improvement of the land for the production of food and other agricultural products consistent with the philosophy of a private property rights state;

(13) food safety, by continuing to support production of the safest food in the world with regulations based on sound scientific evidence;

(14) efforts to participate in the formulation of federal programs and policies, by actively addressing the development of federal policy that affects this state;

(15) promotion of rural fire service, by seeking opportunities to improve the sustainability and effectiveness of rural fire service for the protection of the general public and natural resources; and

(16) promotion of value-added agricultural enterprises, by promoting efforts to increase the value of Texas agricultural products through processing, management practices, or other procedures that add consumer benefits to agricultural goods.

(b) For the purposes of Subsection (a)(11), an agricultural activity is presumed to be:

(1) reasonable and not a nuisance; and

(2) a good agricultural practice not adversely affecting public health and safety if the activity is undertaken in conformity with federal, state, and local laws and regulations.

Added by Acts 1999, 76th Leg., ch. 301, Sec. 2, eff. May 29, 1999.
Amended by Acts 2001, 77th Leg., ch. 3, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 2.001, eff.

September 1, 2009.

Sec. 2.004. AGRICULTURE POLICY BOARD. (a) The Agriculture Policy Board, through research and analysis, shall advocate and recommend strategies for agriculture that enhance agriculture production, income, and employment, that benefit consumers, and that promote efficient and sustainable use of natural resources.

(b) The board is composed of the following voting members:

(1) the commissioner of the Texas Department of Agriculture;

(2) the chair of the House Agriculture and Livestock Committee;

(3) three members of the house of representatives to be appointed by the speaker of the house, preferably with expertise in agriculture or from predominately rural or agriculturally oriented districts; and

(4) four members of the senate to be appointed by the lieutenant governor, preferably with expertise in agriculture or from predominately rural or agriculturally oriented districts.

(c) The members of the board shall elect from its membership a chair.

(d) Employees of the House Agriculture and Livestock Committee and the Senate Natural Resources Committee Subcommittee on Agriculture shall provide staff services for the board.

(e) The board shall continue the development of agriculture policy guidelines consistent with Section 2.003 and shall:

(1) review all legislation that will impact agriculture in this state for compliance with the guidelines;

(2) review all agriculture budget issues for compliance with the guidelines and establish priorities for agriculture-related research and agency budgets related to agriculture;

(3) review all current statutes that affect agriculture in this state for compliance with the guidelines; and

(4) review all agency rulemaking authority for compliance with the guidelines.

(f) Service as a member of the board is an additional duty of the member's public office.

(g) Legislative members of the board serve two-year terms and membership on the board terminates if the member ceases membership in

the legislature for any reason.

(h) A vacancy in an appointive position on the board is filled in the same manner as the original appointment.

(i) Members of the board serve without compensation or reimbursement of expenses. Members shall be reimbursed in accordance with their public office.

(j) The board shall create a 15-member ad hoc advisory committee to assist the board in carrying out the official duties of the board. Members of the advisory committee serve without compensation or reimbursement of expenses.

(k) The board shall adopt rules necessary for the proceedings of the board.

Added by Acts 2001, 77th Leg., ch. 62, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1328, Sec. 1, eff. June 21, 2003.

Sec. 2.005. POLICY: BISON. The agricultural policy of this state must recognize that bison:

(1) are wild animals indigenous to this state;

(2) are distinct from cattle, livestock, exotic livestock, and game animals; and

(3) may be raised and used for:

(A) commercial purposes; or

(B) the purpose of preserving the bison species.

Added by Acts 2003, 78th Leg., ch. 41, Sec. 1, eff. May 15, 2003.

Sec. 2.006. POLICY: PROTECTION OF STATE FROM CERTAIN PESTS AND DISEASES. (a) The agricultural policy of this state must recognize that it is of paramount importance to protect this state and the agriculture industry in this state against the intentional or unintentional introduction or dissemination of damaging plant and animal pests and diseases.

(b) The department, with the assistance of the Texas Animal Health Commission, shall pursue a policy of ensuring that the borders of this state are secure from shipments of potentially dangerous plant and animal pests and diseases.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 1, eff. June 18, 2005.

TITLE 2. DEPARTMENT OF AGRICULTURE
CHAPTER 11. ADMINISTRATION

Sec. 11.001. DEPARTMENT; COMMISSIONER. The Department of Agriculture is under the direction of the commissioner of agriculture, who is responsible for exercising the powers and performing the duties assigned to the department by this code or other law.

Acts 1981, 67th Leg., p. 1016, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 11.002. HEADQUARTERS. The department headquarters are in Austin.

Acts 1981, 67th Leg., p. 1016, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 11.003. SUNSET PROVISION. The Department of Agriculture is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2021.

Acts 1981, 67th Leg., p. 1016, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 183, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 729, Sec. 8, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 2.01, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 9.01, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 3.01, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 2.01, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 8.01, eff. September 1, 2009.

Sec. 11.004. ELECTION AND TERM OF COMMISSIONER. The commissioner is elected for a term of four years.

Acts 1981, 67th Leg., p. 1016, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 11.005. QUALIFICATIONS. (a) To be eligible for election as commissioner or appointment to fill a vacancy in the office of commissioner, a person must:

(1) have been engaged, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, in the business of agriculture;

(2) have worked, for the five-year period preceding the calendar year in which the person is elected or appointed to the person's initial term, for a state or federal agency in a position directly related to agriculture;

(3) have owned or operated, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, farm, ranch, or timber land that qualifies for agricultural use appraisal under Subchapter C, Chapter 23, Tax Code, and be participating, in the calendar year in which the person is elected or appointed to the person's initial term, in a farm program administered by the federal Agricultural Stabilization and Conservation Service; or

(4) have worked, for at least five years at any time before the calendar year in which the person is elected or appointed to the person's initial term, for the Texas Agricultural Council, an organization that is a member of the Texas Agricultural Council, or another agricultural producer association.

(b) For purposes of this section, a person is engaged in the business of agriculture if the person is engaged, for the purpose of wholesale or retail sale, in:

(1) the production of crops for human or animal consumption, or planting seed;

(2) floriculture, viticulture, horticulture, or aquaculture;

(3) the raising or keeping of livestock; or

(4) the processing of any of the products listed in Subdivisions (1) through (3) of this subsection.

Acts 1981, 67th Leg., p. 1016, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.01, eff. September 1, 2009.

Sec. 11.007. DEPUTY COMMISSIONER. (a) The commissioner shall appoint a deputy commissioner. In order to serve as deputy commissioner, a person must have practical knowledge of agriculture, horticulture, manufacturing, and related industries and of the proper method of marketing the products of those industries.

(b) The deputy commissioner shall take the oath of office required of the commissioner.

(c) The deputy commissioner shall perform duties assigned by the commissioner. In addition, the deputy commissioner shall perform the duties assigned by law to the commissioner during a necessary and unavoidable absence of the commissioner or during the commissioner's inability to act.

(d) The deputy commissioner serves at the will of the commissioner.

(e) The state shall pay the expenses incurred by the deputy commissioner while traveling on the business of the office under the direction of the commissioner.

Acts 1981, 67th Leg., p. 1016, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2003, 78th Leg., ch. 285, Sec. 1, eff. Sept. 1, 2003.

Sec. 11.008. FUNDS OF THE DEPARTMENT. Except as otherwise provided by law, all money paid to the department is subject to Subchapter F, Chapter 404, Government Code.

Acts 1981, 67th Leg., p. 1017, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.01, eff. Sept. 1, 1995.

CHAPTER 12. POWERS AND DUTIES

Sec. 12.001. EXECUTION OF LAWS. The department shall execute all applicable laws relating to agriculture.

Acts 1981, 67th Leg., p. 1017, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 12.0011. AUTHORITY TO ENTER INTO COOPERATIVE AGREEMENTS. To carry out its duties under this code, the department may enter into cooperative agreements with:

(1) private entities; and

(2) local, state, federal, and foreign governmental entities.

Added by Acts 2001, 77th Leg., ch. 52, Sec. 1, eff. May 7, 2001.

Sec. 12.0012. NOTIFICATION. The department shall, upon submission for publication, notify the Texas Division of Emergency Management of each quarantine it adopts. The department shall thereafter cooperate with the Texas Division of Emergency Management in implementing any necessary safeguards to protect the state's agricultural resources from potential economic, health, or ecological disaster that may result from the quarantined pest or disease.

Added by Acts 2003, 78th Leg., ch. 1107, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 2B.01, eff. September 1, 2009.

Sec. 12.002. DEVELOPMENT OF AGRICULTURE. The department shall encourage the proper development and promotion of agriculture, horticulture, and other industries that grow, process, or produce products in this state.

Acts 1981, 67th Leg., p. 1017, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 208, Sec. 1, eff. May 21, 2001; Acts 2003, 78th Leg., ch. 265, Sec. 1, eff. June 18, 2003.

Sec. 12.0025. NUTRITION PROGRAMS. The department shall administer the following federal and state nutrition programs:

(1) the commodity supplemental food program under 7 U.S.C. Section 612c;

(2) the food distribution program under 7 U.S.C. Section 612c;

(3) the emergency food assistance program under 7 U.S.C. Section 7501 et seq.;

(4) the school lunch program under 42 U.S.C. Section 1751 et seq.;

(5) the summer food service program under 42 U.S.C. Section 1761;

(6) the child and adult care food program under 42 U.S.C. Section 1766;

(7) the special milk program under 42 U.S.C. Section 1772; and

(8) the school breakfast program under 42 U.S.C. Section 1773.

Added by Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 1, eff. June 15, 2007.

Sec. 12.0026. INTERAGENCY FARM-TO-SCHOOL COORDINATION TASK FORCE. (a) To promote a healthy diet for schoolchildren and the business of small to mid-sized local farms and ranches, the interagency farm-to-school coordination task force shall develop and implement a plan to facilitate the availability of locally grown food products in public schools.

(b) The task force is composed of:

(1) a representative of:

(A) the department, appointed by the commissioner;

(B) the Texas Education Agency, appointed by the commissioner of education; and

(C) the Department of State Health Services, appointed by the commissioner of state health services; and

(2) at least one representative of each of the following groups, appointed by the commissioner:

(A) fruit and vegetable producer organizations;

(B) school food service organizations;

(C) food distribution businesses;

(D) child nutrition and advocacy organizations;

(E) parent organizations;

(F) educational institutions that conduct research in

the areas of agriculture and nutrition; and

(G) health nutrition educators who serve school districts.

(c) A member of the task force serves at the will of the official who appointed the member.

(d) The representative of the department serves as presiding officer. The task force may elect other necessary officers from its members.

(e) The task force shall meet at the call of the presiding officer.

(f) The agency whose commissioner appoints a member is responsible for the expenses of a member's service on the task force. A member of the task force is not entitled to additional compensation for serving on the task force.

(g) Each appropriate agency or group represented on the task force shall provide the personnel and resources necessary to implement a task force measure under this section.

(h) The task force shall:

(1) design new education resources, or review or update existing resources, on nutrition and food education that may be used by schools and school districts;

(2) expand food-focused experiential education programs;

(3) offer assistance in identifying funding sources and grants that allow schools and school districts to recover the costs associated with purchasing locally grown food products;

(4) develop a database of available locally grown food products for use by school food service agencies that includes contact and purchasing information for the products;

(5) identify, design, or make available training programs to enable local farmers and ranchers to market their products to schools and school districts, including programs related to:

(A) crop production;

(B) marketing of crops;

(C) postharvest handling of crops;

(D) food safety;

(E) business management;

(F) liability and risk management; and

(G) other topics deemed appropriate by the task force;

(6) advise schools and school districts on methods by which a school or school district may improve its facilities to allow for

the use of minimally processed, fresh, and locally produced foods in school meals;

(7) provide technical assistance to school food service agencies to establish procedures, recipes, menu rotations, and other internal processes that accommodate the use of locally grown foods in public schools;

(8) offer advanced skills development training to school food service employees regarding the proper methods of handling, preparing, and serving locally grown foods; and

(9) conduct any other activity considered by the task force as necessary to achieve its goals under this section.

(i) The task force may solicit and accept gifts, grants, and donations from public and private entities to use for the purposes of this section.

(j) The task force may use any existing program or procedure that it determines to be useful in performing its duties under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1376 (S.B. 1027), Sec. 1, eff. September 1, 2009.

Sec. 12.0027. NUTRITION OUTREACH PROGRAM. (a) The department may develop an outreach program to promote better health and nutrition programs and prevent obesity among children in this state.

(b) The department may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this section.

(c) The department may adopt rules as necessary to administer an outreach program established under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.03, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 728 (S.B. 282), Sec. 1, eff. June 19, 2009.

Sec. 12.0028. LIMITATION ON SANCTIONS IMPOSED ON SCHOOL DISTRICTS FOR SALE OF FOODS OF MINIMAL NUTRITIONAL VALUE. (a) In this section, "food of minimal nutritional value" has the meaning assigned by 7 C.F.R. Section 210.11(a)(2).

(b) The department may not impose on a school district a sanction, including disallowing meal reimbursement, based on the sale to students at a high school of food of minimal nutritional value, if the sale is approved in advance by the school and is made:

(1) outside of a school area designated for food service or food consumption or during a period other than a school meal service period; and

(2) for the purpose of raising money for a student organization or activity sponsored or sanctioned by the school or the school district in which the school is located.

Added by Acts 2013, 83rd Leg., R.S., Ch. 672 (H.B. 1781), Sec. 1, eff. June 14, 2013.

Sec. 12.0029. SUMMER NUTRITION PROGRAMS. (a) In this section:

(1) "Field office" means a field office of a nutrition program administered by the department.

(2) "Summer nutrition program" means the summer food service program under 42 U.S.C. Section 1761. The term includes the seamless summer option under 42 U.S.C. Section 1761(a)(8).

(b) Unless the department grants a school district a waiver under Subsection (f), a district in which 50 percent or more of the students are eligible to participate in the national free or reduced-price lunch program under 42 U.S.C. Section 1751 et seq. shall provide or arrange for the provision of a summer nutrition program for at least 30 days during the period in which district schools are recessed for the summer.

(c) Not later than October 31 of each year, the department shall notify each school district described by Subsection (b) of the district's responsibility concerning provision of a summer nutrition program during the next period in which school is recessed for the summer.

(d) Not later than November 30 of each year, the board of trustees of a school district that intends to request a waiver under Subsection (e)(2) must send written notice of the district's intention to the district's local school health advisory council. The notice must include an explanation of the district's reason for requesting a waiver of the requirement.

(e) Each school district that receives a notice under

Subsection (c) shall, not later than January 31 of the year following the year in which the notice was received:

(1) inform the department in writing that the district intends to provide or arrange for the provision of a summer nutrition program during the next period in which district schools are recessed for the summer; or

(2) request in writing that the department grant the district a waiver of the requirement to provide or arrange for the provision of a summer nutrition program.

(f) The department may grant a school district a waiver of the requirement to provide or arrange for the provision of a summer nutrition program only if:

(1) the district:

(A) provides documentation, verified by the department, showing that:

(i) there are fewer than 100 children in the district currently eligible for the national free or reduced-price lunch program;

(ii) transportation to enable district students to participate in the program is an insurmountable obstacle to the district's ability to provide or arrange for the provision of the program despite consultation by the district with public transit providers;

(iii) the district is unable to provide or arrange for the provision of a program due to renovation or construction of district facilities and the unavailability of an appropriate alternate provider or site; or

(iv) the district is unable to provide or arrange for the provision of a program due to another specified extenuating circumstance and the unavailability of an appropriate alternate provider or site; and

(B) has worked with the field offices to identify another possible provider for the program in the district; or

(2) the cost to the district to provide or arrange for provision of a program would be cost-prohibitive, as determined by the department using the criteria and methodology established under Subsection (g).

(g) The department by rule shall establish criteria and a methodology for determining whether the cost to a school district to provide or arrange for provision of a summer nutrition program would

be cost-prohibitive for purposes of granting a waiver under Subsection (f)(2).

(h) A waiver granted under Subsection (f) is for a one-year period.

(i) If a school district has requested a waiver under Subsection (e)(2) and has been unable to provide to the department a list of possible providers for the summer nutrition program, the field offices shall continue to attempt to identify an alternate provider for the district's summer nutrition program.

(j) Not later than December 31 of each even-numbered year, the department shall provide to the legislature by e-mail a report that, for each year of the biennium:

(1) states the name of each school district that receives a notice under Subsection (c) and indicates whether the district:

(A) has provided or arranged for the provision of a summer nutrition program; or

(B) has not provided or arranged for the provision of a program and did not receive a waiver;

(2) identifies the funds, other than federal funds, used by school districts and the state in complying with this section; and

(3) identifies the total amount of any profit made or loss incurred through summer nutrition programs under this section.

(k) The department shall post and maintain on the department's Internet website the most recent report required by Subsection (j).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1052 (S.B. 89), Sec. 1, eff. September 1, 2011.

For expiration of this section, see Subsection (e).

Sec. 12.00291. PLAN TO INCREASE OUTCOMES IN SUMMER FOOD SERVICE PROGRAM. (a) The department shall develop a five-year plan in collaboration with Baylor University's Texas Hunger Initiative and implement no-cost provisions to increase outcomes in the summer food service program under 42 U.S.C. Section 1761. The plan must include:

(1) methods to increase participation by children eligible to receive free or reduced-price school lunches; and

(2) strategies to increase access to summer meals in rural areas for children eligible to receive free or reduced-price school lunches.

(b) In developing the plan, the department shall involve any appropriate department advisory committee that already exists and shall seek the participation of relevant stakeholders.

(c) Not later than November 1, 2014, the department shall submit to the governor, lieutenant governor, speaker of the house of representatives, and appropriate standing committees of the legislature the plan to be implemented over the next four years.

(d) The department may solicit and accept a gift, grant, or donation from any source, including a foundation or private entity, for the development of the plan. The plan may be developed and implemented only if sufficient funds are available under this subsection for that purpose.

(e) This section expires September 1, 2018.

Added by Acts 2013, 83rd Leg., R.S., Ch. 879 (H.B. 749), Sec. 1, eff. September 1, 2013.

Sec. 12.003. AGRICULTURAL SOCIETIES. The department shall encourage the organization of agricultural societies.

Acts 1981, 67th Leg., p. 1017, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 12.006. DEVELOPMENT OF DOMESTIC AND FOREIGN MARKETS. The department shall investigate and report on the question of broadening the market and increasing the demand for cotton goods and all other agricultural or horticultural products in the United States and foreign countries. The department shall compile information beneficial to farmers, including information pertaining to:

(1) the number of bales of cotton consumed by spinners in foreign countries;

(2) the demand for cotton produced in Texas;

(3) the methods and course of sales to foreign countries, showing the purchasers, brokers, and others who handle the cotton after it leaves the producers; and

(4) countries with which trade could be increased, thereby creating a better outlet for trade and the best method for bringing consumer and purchaser together.

Acts 1981, 67th Leg., p. 1018, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 12.007. PLANT DISEASES AND PESTS. The department shall investigate the diseases of crops grown in this state, including grain, cotton, and fruit, to discover remedies. The department shall also investigate the habits and propagation of insects that are injurious to the crops of the state and the best methods for their destruction. The department shall supervise the protection of fruit trees, shrubs, and plants as provided by law.

Acts 1981, 67th Leg., p. 1018, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 12.010. CORRESPONDENCE WITH GOVERNMENT AGENCIES AND OTHERS. The department shall correspond with the United States Department of Agriculture, with the agriculture departments of the other states and territories, and, at the option of the department, with the agriculture departments of foreign countries and representatives of the United States in those countries, for the purpose of gathering information that will advance the interests of agriculture in the state. For the same purpose, the department may correspond with organizations and individuals whose objective is the promotion of agriculture in any branch.

Acts 1981, 67th Leg., p. 1019, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 12.011. AGRICULTURAL RESOURCE STATISTICS. The department shall collect and publish statistics and other information relating to industries of this state and other states that the department considers beneficial in developing the agricultural resources of this state.

Acts 1981, 67th Leg., p. 1019, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2001, 77th Leg., ch. 52, Sec. 2, eff. May 7, 2001.

Sec. 12.013. EMPLOYEES. (a) The department may employ personnel as the duties of the department require. The commissioner shall provide to the department's employees, as often as necessary, information regarding their qualifications for employment and their

responsibilities under applicable laws relating to standards of conduct for state employees.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for department employees must be based on the system established under this subsection.

(c) The commissioner or the commissioner's designee shall develop an intraagency career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program shall require intraagency postings of all positions concurrently with any public posting.

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that comply with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the department work force that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated annually and reviewed by the Texas Commission on Human Rights for compliance with Subsection (d)(1) of this section, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1981, 67th Leg., p. 1019, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 3, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 1.02, eff. Sept. 1, 1995.

Sec. 12.0135. CONFLICT PROVISIONS. (a) A person may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of agriculture; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of agriculture.

(b) A person may not act as the general counsel to the commissioner or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(c) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 4, eff. Sept. 1, 1989. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 8.02, eff. September 1, 2009.

Sec. 12.0144. FEE SCHEDULE. The department shall by rule adopt a schedule for all fees set by the department under this code. Except for those activities exempted in the General Appropriations Act, the department shall set fees in an amount which offsets, when feasible, the direct and indirect state costs of administering its regulatory activities.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 2.01, eff. Sept. 1,

1995.

Sec. 12.0145. SUBMISSION OF PROPOSED FEE SCHEDULE. The department shall include, as part of each request for legislative appropriations submitted to the Legislative Budget Board, a proposed fee schedule that would recover all direct costs of administering each regulatory program of the department except a regulatory program exempted by the department because increased cost recovery would be contrary to the program's purpose.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 6, eff. Sept. 1, 1989.

Sec. 12.015. COOPERATION WITH TEXAS A & M UNIVERSITY AND EXPERIMENT STATIONS. This chapter does not affect the scope or character of the work of Texas A & M University or of the agricultural experiment stations, and the department shall cooperate with them in all matters relating to the agricultural and horticultural interests of the state.

Acts 1981, 67th Leg., p. 1020, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 12.016. RULES. The department may adopt rules as necessary for the administration of its powers and duties under this code.

Acts 1981, 67th Leg., p. 1020, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.03, eff. Sept. 1, 1995.

Sec. 12.0175. GROWN OR PRODUCED IN TEXAS PROGRAM. (a) The department by rule may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state.

(b) The department may charge a membership fee, as provided by department rule, for each participant in a program.

(c) The department may adopt rules necessary to administer a program established under this section, including rules governing the

use of any registered logo of the department.

(d) The department may revoke or cancel a certificate of registration or license issued under a program established under this section if a participant fails to comply with a rule adopted by the department.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 8, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 650, Sec. 2, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 208, Sec. 2, eff. May 21, 2001; Acts 2003, 78th Leg., ch. 265, Sec. 2, 3, eff. June 18, 2003.

Sec. 12.0176. COOPERATION WITH CERTAIN COMMODITY PRODUCERS BOARDS. (a) The department may, to the extent that resources are available, enter into a cooperative agreement with a commodity producers board to increase the effectiveness and efficiency of the promotion of Texas agricultural products.

(b) A cooperative agreement may include:

(1) provisions relating to the programs instituted by the department under this chapter and Chapter 46;

(2) provisions relating to board contributions for promotional costs; and

(3) any other provisions the department and the board consider appropriate.

(c) Funds contributed by a board under an agreement under this section are not state funds.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.01, eff. Jan. 11, 2004.

Sec. 12.0177. TEXAS NURSERY AND FLORAL ACCOUNT. Amounts collected under Sections 71.043(b)(2) and 71.057(e)(2) shall be deposited to the credit of the Texas nursery and floral account. The Texas nursery and floral account is an account in the general revenue fund. Money in the account may be used only by the department for:

(1) making grants to promote and market the Texas nursery and floral industries; and

(2) administering this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 960 (H.B. 3496), Sec. 1, eff. June 19, 2009.

Sec. 12.0178. TEXAS NURSERY AND FLORAL ADVISORY COUNCIL. (a) The department shall establish and coordinate the Texas Nursery and Floral Advisory Council. The council consists of seven members appointed by the commissioner who have each been engaged in the nursery, floral, or landscaping business for at least five years.

(b) The council shall advise the department on the most effective methods for promoting and marketing the Texas nursery and floral industries.

(c) A member of the council receives no additional compensation for serving on the council and may not be reimbursed for travel or other expenses incurred while conducting the business of the council.

(d) The council is not subject to Chapter 2110, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 960 (H.B. 3496), Sec. 1, eff. June 19, 2009.

Sec. 12.018. TESTING. (a) On request of any person, the department may test an agricultural product for aflatoxins. The department may set and charge a fee, as provided by department rule, for each test.

(b) On request of any person, the department may perform laboratory analyses on agricultural products, including testing for pesticide residue, protein content, and milk butterfat content.

(c) The department shall set by rule the fee for each type of laboratory analysis.

Acts 1981, 67th Leg., p. 1020, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 56, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 9, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.02, eff. Sept. 1, 1995.

Sec. 12.020. ADMINISTRATIVE PENALTIES. (a) If a person violates a provision of law described by Subsection (c) or a rule or order adopted by the department under a provision of law described by

Subsection (c), the department may assess an administrative penalty against the person as provided by this section.

(b) The penalty for each violation may be in an amount not to exceed the maximum provided by Subsection (c) of this section. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

(c) The provisions of law subject to this section and the applicable penalty amounts are as follows:

Provision	Amount of Penalty
Chapters 13, 14A, 17, 18, 19, 41, 46, 61, 72, 73, 74, 76, 94, 95, 101, 102, 103, 125, 132, and 134	not more than $5,000
Subchapters A, B, and C, Chapter 71	not more than $5,000
Chapter 14	not more than $10,000
Chapter 1951, Occupations Code	not more than $5,000
Chapter 153, Natural Resources Code	not more than $5,000.

(d) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public;

(2) the damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a violation

report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (d) of this section.

(f) Not later than the 14th day after the date on which the report is issued, the department shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Not later than the 20th day after the date on which notice is received, the person charged shall accept the determination of the department made under Subsection (e), 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, 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:

(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.

(l) Within the 30-day period, a person who acts under Subsection (k)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(m) The department on receipt of a copy of an affidavit under Subsection (l)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement

of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(n) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of 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.

(p) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(q) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(r) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

(s) All proceedings under this section are subject to Chapter 2001, Government Code, except as provided in Subsections (t) and (u).

(t) Notwithstanding Section 2001.058, Government Code, the commissioner may change a finding of fact or conclusion of law made by the administrative law judge if the commissioner:

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law,

department rules or policies, or prior administrative decisions; or

(B) issued a finding of fact that is not supported by a preponderence of the evidence; or

(2) determines that a department policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(u) The commissioner shall state in writing the specific reason and legal basis for a determination under Subsection (t).

Added by Acts 1983, 68th Leg., p. 5382, ch. 990, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 10, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (52), (53), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 358, Sec. 2, eff. June 8, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.02, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 186, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 374, Sec. 1, eff. May 25, 2001; Acts 2001, 77th Leg., ch. 1124, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 567 (H.B. 3199), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 1.01, eff. September 1, 2013.

Sec. 12.0201. LICENSE SANCTIONS. (a) In addition to other sanctions provided by law, the department may revoke, modify, suspend, or refuse to issue or renew a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a license holder if the department finds that the practitioner:

(1) violated a provision of this code or Chapter 1951, Occupations Code;

(2) violated a rule adopted by the department under this

code or Chapter 1951, Occupations Code; or

(3) after appropriate notice, failed to comply with an order of the department.

(b) In addition to any other actions permitted under this code or Chapter 1951, Occupations Code, if a license suspension is probated, the department may require the practitioner:

(1) to maintain additional information in the practitioner's records;

(2) to report regularly to the department on matters that are the basis of the probation;

(3) to limit practice to the areas prescribed by the department; or

(4) to continue or review professional education until the practitioner attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.04, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 52, Sec. 3, eff. May 7, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.01, eff. September 1, 2009.

Sec. 12.0202. ADMINISTRATIVE HEARINGS. If the department proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by Chapter 2001, Government Code. Rules of practice adopted by the department under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.04, eff. Sept. 1, 1995.

Sec. 12.0203. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commissioner shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008,

Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commissioner shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 8.03, eff. September 1, 2009.

Sec. 12.021. FEE FOR PHYTOSANITATION INSPECTION; ISSUANCE OF CERTIFICATE. The department shall collect an inspection fee, as provided by department rule, for a phytosanitation inspection required by foreign countries or other states for agricultural products, processed products, or equipment exported from this state. The department may issue a phytosanitary certificate on completion of the inspection.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 58, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.03, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 52, Sec. 4, eff. May 7, 2001.

Sec. 12.022. AUTHORITY TO SOLICIT AND ACCEPT GIFTS, GRANTS, AND DONATIONS. The department may solicit and accept gifts, grants, and donations of money, services, or property from any person. Money received by the department under this section may be expended or distributed for any public purpose related to the department's duties.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 11, eff. Sept. 1, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.02, eff. September 1, 2009.

Sec. 12.023. EXPIRATION OF REGISTRATION OR LICENSES. The department by rule shall adopt a system under which 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.

Added by Acts 1985, 69th Leg., ch. 664, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 12.021 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(1), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 12, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 1.05, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.02, eff. September 1, 2009.

Sec. 12.024. LATE RENEWAL OF LICENSE OR REGISTRATION. (a) A person who is otherwise eligible to renew a license or registration may renew an unexpired license or registration by paying the required renewal fee to the department before the expiration date of the license or registration. A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration has been renewed under the provisions of this section.

(b) If the person's license or registration has been expired for 90 days or less, the person may renew the license or registration

by paying to the department 1-1/2 times the required renewal fee.

(c) If the person's license or registration has been expired for longer than 90 days but less than one year, the person may renew the license or registration by paying to the department two times the required renewal fee.

(d) If the person's license or registration has been expired for one year or longer, the person may not renew the license or registration. The person may obtain a new license or registration by submitting to reexamination, if applicable, and complying with the requirements and procedures for obtaining an original license or registration.

(e) If the person was licensed or registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding application, the person may renew an expired license or registration without reexamination, if required. The person must pay to the department a fee that is equal to two times the required renewal fee for the license or registration.

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

(g) The department by rule shall set fees required by this section.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 13, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 419, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 650, Sec. 3, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1016, Sec. 10, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 2.04, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 2.01, eff. September 1, 2013.

Sec. 12.025. PROGRAM ACCESSIBILITY PLAN. The department shall comply with federal and state laws related to program and facility accessibility. The commissioner shall also prepare and maintain a written plan that describes how a person who does not speak English

can be provided reasonable access to the department's programs and services.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 14, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.06, eff. Sept. 1, 1995.

Sec. 12.026. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or

(3) in a bill for service provided by an individual or entity regulated by the department.

(c) The department shall keep an information file about each complaint filed with the department. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the agency took no action, an explanation of the reason the complaint was closed without action.

(d) The department shall keep a file about each written complaint filed with the department that the department has authority

to resolve. The department shall provide to the person filing the complaint and the persons or entities complained about the department's policies and procedures pertaining to complaint investigation and resolution. The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 15, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.07, eff. Sept. 1, 1995.

Sec. 12.0261. ADMINISTRATIVE PROCEDURE. The department is subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.08, eff. Sept. 1, 1995.

Sec. 12.027. ECONOMIC DEVELOPMENT PROGRAM. (a) The department shall maintain an economic development program for rural areas in this state.

(b) In administering the program, the department shall:

(1) promote economic growth in rural areas;

(2) identify potential opportunities for business in rural areas and assist rural communities in maximizing those opportunities;

(3) work with rural communities to identify economic development needs and direct those communities to persons who can address and assist in meeting those needs;

(4) encourage communication between organizations, industries, and regions to improve economic and community development services to rural areas;

(5) coordinate meetings with public and private entities to distribute information beneficial to rural areas;

(6) enter into a memorandum of agreement to work cooperatively with the Texas Economic Development and Tourism Office, the Texas A&M AgriLife Extension Service, and other entities the department deems appropriate to further program objectives; and

(7) perform any other functions necessary to carry out the

program.

(c) The department may employ personnel to carry out the program.

(d) The department by rule may charge a membership fee to a participant in the program.

(e) The department may adopt rules as necessary to administer the program, including rules regarding the use of any state or federally registered trademarks, certification marks, or service marks of the department.

(f) The department may revoke a participant's certificate of registration or license issued under the program if the participant fails to comply with a rule adopted by the department.

(g) In addition to the department's authority under Subsection (a), the department may request, accept, and use any gift, grant, loan, donation, aid, appropriation, guaranty, allocation, subsidy, or contribution of any item of value to further an economic development program in this state.

Added by Acts 2001, 77th Leg., ch. 15, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 69 (S.B. 1086), Sec. 1, eff. May 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 1, eff. June 14, 2013.

Sec. 12.0271. RURAL ECONOMIC DEVELOPMENT AND INVESTMENT PROGRAM. (a) From funds appropriated for that purpose, the commissioner shall establish and administer a financial assistance program to encourage private economic development in rural areas. Financial assistance under the program may be provided only to:

(1) a county with a population of not more than 75,000;

(2) a municipality with a population of not more than 50,000; or

(3) an economic development corporation or community development financial institution that primarily represents a county or municipality described by this subsection.

(b) Financial assistance under Subsection (a) may be used only for a project relating to:

(1) the acquisition or development of land, easements, or

rights-of-way;

(2) attracting new private enterprises to the county or municipality, including:

(A) manufacturing facilities;

(B) freight storage facilities;

(C) distribution warehouse centers; and

(D) other nonretail private enterprises;

(3) the construction, extension, or other improvement of:

(A) water or waste disposal facilities; or

(B) transportation infrastructure; or

(4) any other activity relating to private economic development that the commissioner determines will encourage economic and infrastructure development in a rural area.

(c) To further a purpose described by Subsection (b), the commissioner may provide financial assistance to an eligible county, municipality, community development financial institution, or economic development corporation by:

(1) extending credit by direct loan, based on the credit of the county, municipality, community development financial institution, or economic development corporation;

(2) providing a credit enhancement;

(3) effectively lowering interest rates;

(4) financing a purchase or lease agreement in connection with an economic or infrastructure development project; or

(5) providing methods of leveraging money from sources other than this state that are related to the project for which the assistance is provided.

(d) A county, municipality, community development financial institution, or economic development corporation that receives funds under Subsection (c) shall segregate the funds from other funds under the control of the county, municipality, or economic development corporation and use the funds only for a purpose described by this section. Any funds disbursed through the program must be repaid on terms determined by the department.

(e) The department shall adopt rules necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 8.04, eff. September 1, 2009.

Sec. 12.0272. TEXAS ECONOMIC DEVELOPMENT FUND. (a) The Texas economic development fund is a fund in the state treasury. The fund consists of:

(1) all interest, income, revenue, and other assets associated with economic development programs established using money allocated and paid to the department under the August 15, 2011, allocation agreement between the department and the United States Department of the Treasury, as amended, to implement the State Small Business Credit Initiative Act of 2010 (12 U.S.C. Section 5701 et seq.);

(2) all money, deposits, distributions, dividends, earnings, gain, income, interest, proceeds, profits, program income, rents, returns of capital, returns on investments, royalties, revenue, or yields received or realized by the department as a result of an investment made by or on behalf of the department pursuant to the August 15, 2011, allocation agreement between the department and the United States Department of the Treasury, as amended;

(3) gifts, loans, donations, aid, appropriations, guaranties, allocations, subsidies, grants, or contributions received under Section 12.027(g);

(4) interest and income earned on the investment of money in the fund; and

(5) other money required by law to be deposited in the fund.

(b) Money in the Texas economic development fund may be appropriated only to the department for the purpose of administering, establishing, implementing, or maintaining an economic development program under this section and is dedicated to and may be used only for the administration, establishment, implementation, or maintenance of one or more of the department's economic development programs.

(c) The Texas economic development fund is exempt from Section 403.095, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 2, eff. June 14, 2013.

Sec. 12.028. COMPETITIVE BIDDING OR ADVERTISING. (a) The department may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to

prohibit false, misleading, or deceptive practices by the person.

(b) The department may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the department a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 17, eff. Sept. 1, 1989.

Sec. 12.029. MINORITY AND FEMALE-OWNED BUSINESS CONTRACTS. (a) The department shall establish by rule policies to encourage minority and female-owned small businesses to bid for contract and open market purchases of the department and to assist those businesses in that bidding. The department shall review the policies periodically to correct any deficiencies in the policies.

(b) The department annually shall determine the number, types, and value of contracts awarded to minority and female-owned small businesses in the year preceding the determination and the ratio of the number and the value of those contracts to the number and the value of all contracts awarded by the department in that year.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(2), eff. June 17, 2011.

(d) In this section, "minority and female-owned small business" means a business enterprise:

(1) that is independently owned and operated, that was formed for the purpose of making a profit, and that has fewer than 100 employees and less than $1 million in annual gross receipts; and

(2) that is controlled by one or more socially and economically disadvantaged persons who own at least 51 percent of the business enterprise and are socially disadvantaged because of their identification as members of certain groups, including women, black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans, and American Indians.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 18, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.79, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(2), eff. June 17, 2011.

Sec. 12.031. ADVERTISING, PUBLICATIONS, AND FEES. (a) The department may provide or sell information, including books, magazines, photographs, prints, and bulletins, to the public concerning agriculture, horticulture, or related industries.

(a-1) In order to market and promote agricultural and other products grown, processed, or produced in this state, the department may create, distribute, and provide informational materials to the public in any type of media format.

(b) In order to recover the costs of administering activities under Sections 12.002, 12.0175, 46.0095, 47.052, and 50B.001, the department may sell advertising and assess and collect fees, revenues, and royalties on department-owned content, information, or materials described by Subsections (a) and (a-1), including the department's state or federally registered certification marks, service marks, and trademarks.

(c) The department may enter into agreements with private entities and local, state, federal, or foreign governmental entities for publication of information concerning agriculture, horticulture, or related industries.

(c-1) The department may collect an event fee or a royalty for the marketing and promotional activities authorized by:

(1) this chapter;

(2) Chapter 46;

(3) Chapter 47; or

(4) Chapter 50B.

(d) Money received under this section shall be deposited in the State Treasury and may be appropriated only to the department for the department's activities or programs relating to the marketing and promotion of agriculture, horticulture, and other industries that grow, process, or produce products in this state.

Added by Acts 1993, 73rd Leg., ch. 226, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 69 (S.B. 1086), Sec. 2, eff. May 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 69 (S.B. 1086), Sec. 3, eff. May 17, 2011.

Sec. 12.032. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief administrative law judge of the State Office of Administrative Hearings by rule shall adopt a memorandum of understanding under which the State Office of Administrative Hearings conducts hearings for the department under this code. The memorandum of understanding shall require the chief administrative law judge, the department, and the commissioner to cooperate in connection with the hearings under this code and may authorize the State Office of Administrative Hearings to perform any administrative act, including giving of notice, that is required to be performed by the department or the commissioner under this code. The memorandum of understanding shall also require that hearings under this section be held at a location agreed upon by the State Office of Administrative Hearings and the department.

(b) For a hearing conducted by the State Office of Administrative Hearings under this code, the department and the commissioner retain the authority to decide whether the administrative law judge conducting the hearing for the State Office of Administrative Hearings shall:

(1) enter the final decision in the case after completion of the hearing; or

(2) propose a decision to the department or the commissioner for final consideration.

(c) Any provision of this code that provides that the department or the commissioner take an action at a hearing means:

(1) that the department or the commissioner shall take the action after the receipt of a proposal for decision from the State Office of Administrative Hearings regarding the hearing conducted by that office; or

(2) if so directed by the department or the commissioner, the State Office of Administrative Hearings shall enter the final decision in the case after completion of the hearing.

(d) The department shall prescribe rules of procedure for any cases not heard by the State Office of Administrative Hearings.

(e) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting administrative hearings for the department. The department may pay an hourly fee for the costs of conducting these hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(f) This section does not apply to hearings held under Chapter 103.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 3.01, eff. Sept. 1, 1995.

Sec. 12.033. MULTIPLE LICENSES. (a) In this section:

(1) "Component license" means a license issued by the department that is consolidated under this section.

(2) "Grocer" means a person whose business consists primarily of the retail sale of food for human consumption.

(b) A grocer who holds more than one type of license issued by the department may obtain from the department a single consolidated license. A consolidated license authorizes each of the activities of the component licenses.

(c) The department by rule shall implement a program for the issuance of a consolidated license under this section. The rules shall include provisions for:

(1) a fee schedule for the consolidated license that considers:

(A) the cost of operating each component license program; and

(B) the economic efficiency gained by the department through the operation of a consolidated license program;

(2) the suspension or revocation of a consolidated license for a violation of a rule or statute authorizing one of the component licenses;

(3) the combination of all inspections required for the component licenses into a single inspection; and

(4) any other provision the department determines is necessary to implement this section.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 8.01, eff. Sept. 1,

1995.

Sec. 12.034. REFUND OR WAIVER OF FEES. The department by rule may provide for:

(1) the full or partial refund of a fee collected by the department;

(2) the waiver of a licensing, registration, or certification fee collected by the department, including any related late fee; and

(3) the waiver of an inspection fee.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 2.05, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 196, Sec. 1, eff. Sept. 1, 2003.

Sec. 12.035. NOTICE TO EXAMINEE. Not later than the 30th day after the date on which a licensing or registration examination is administered under this code, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the date on which the department receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day. The department may require a testing service to notify examinees of the results of an examination.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.09, eff. Sept. 1, 1995.

Sec. 12.036. LICENSING OUT-OF-STATE APPLICANTS. The department may waive any prerequisite to obtaining a license or registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license or registration requirements substantially equivalent to those of this state.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.09, eff. Sept. 1, 1995.

Sec. 12.037. CONTINUING EDUCATION. The department may recognize, prepare, or administer continuing education programs for its license holders.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.09, eff. Sept. 1, 1995.

Sec. 12.038. OFFICE OF RURAL AFFAIRS. (a) The department shall establish and maintain an Office of Rural Affairs. The office shall be headed by a rural affairs director. To be eligible to serve as the rural affairs director, a person must have demonstrated a strong commitment to and involvement in economic development activities in rural areas.

(b) The Office of Rural Affairs shall:

(1) develop a rural resource guide and provide the information to rural areas through print and electronic media and through use of the Texas Business and Community Economic Development Clearinghouse;

(2) provide information to state agencies on the effects of proposed policies or actions that affect rural areas;

(3) cosponsor meetings, to the extent practical, in cooperation with public and private educational institutions to disseminate information beneficial to rural areas;

(4) identify potential opportunities for businesses in rural areas and assist these businesses to maximize those opportunities;

(5) conduct an analysis of the available federal, state, and local government and rural economic development business outreach and data services in rural areas of this state by examining the availability of:

(A) computerized economic development databases that provide data for existing and prospective businesses and communities in rural areas of this state; and

(B) business information outreach service offices or centers that provide comprehensive technical assistance, research,

consulting services, training, and other services to businesses in rural areas; and

(6) perform any other functions necessary to carry out the purposes of this section.

(c) In administering this section, the department may:

(1) employ and set the compensation of personnel to carry out the Office of Rural Affairs' functions under this section; and

(2) consult with:

(A) experts and authorities in the fields of rural development, economic development, and community development;

(B) individuals with regulatory, legal, economic, or financial expertise, including members of the academic community; and

(C) individuals who represent the public interest.

(d) Each state agency must, on request, furnish the Office of Rural Affairs with reports and other information necessary to enable the Office of Rural Affairs to carry out the purposes of this section.

(e) The Office of Rural Affairs may accept gifts, grants, and donations from sources other than the state for the purpose of performing specific projects, studies, or procedures or to provide assistance to rural areas.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(3), eff. June 17, 2011.

Renumbered from Government Code Sec. 481.0067 by Acts 2001, 77th Leg., ch. 1437, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(3), eff. June 17, 2011.

Sec. 12.039. CERTAIN WINE PRODUCED OR BOTTLED IN THIS STATE. (a) The Texas Wine Marketing Research Institute or other qualified entity shall, as funding is available, conduct an annual study relating to the quantities and varieties of grapes and other fruit grown in this state that are used for wine making.

(b) Not later than October 15 of the study year, the Texas Wine Marketing Research Institute or other qualified entity shall submit a report to the commissioner. The report must:

(1) include:

(A) the quantities and varieties of grapes and other fruit grown in this state that are available on September 30 of the study year for use in wine making;

(B) the needs of wineries in this state for those grapes and other fruit to meet the wineries' projected production estimates for the following calendar year; and

(C) recommendations regarding the varieties of grapes and other fruit grown in this state for which a reduction in the percentage by volume of Texas grapes used should be granted under Subsection (d); or

(2) state that funding was not available to complete the study required by this section.

(c) If a statement is provided in accordance with Subsection (b)(2), the reporting entity shall include in the report:

(1) any information that has been routinely collected or developed by the reporting entity and that might be useful in determining the quantities and varieties of grapes and other fruit grown in this state that are available for use in wine making the following calendar year; and

(2) recommendations regarding the varieties of grapes and other fruit grown in this state for which a reduction in the percentage by volume of Texas grapes used should be granted under Subsection (d).

(d) The commissioner shall review the report and, if the commissioner determines that the quantity of a variety of grapes or other fruit grown in this state is insufficient for the wineries in this state to produce their projected production estimates during the following calendar year, the commissioner may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under Section 16.011, Alcoholic Beverage Code. The percentage established under this subsection must ensure that the use of that variety of grape or other fruit grown in this state is maximized while allowing for the acquisition of grapes or other fruit grown outside of this state in a quantity sufficient to meet the needs of wineries in this state.

(e) The commissioner shall submit the commissioner's determination to the Texas Alcoholic Beverage Commission in writing and publish the commissioner's determination in the Texas Register

and on the department's Internet website not later than December 31 of the study year.

(f) A percentage requirement established under Subsection (d) applies to wine bottled under Section 16.011, Alcoholic Beverage Code, during the calendar year following the study year.

(g) If a winery in this state finds that the determination made by the commissioner under Subsection (d) does not reduce the percentage requirement with respect to a particular variety of grape or other fruit to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information to the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of fruit.

(h) The commissioner may:

(1) establish a voluntary registry for vineyards and other fruit growers in this state to assist in the determination of the availability of grapes and other fruit grown in this state and facilitate communication between the wineries and fruit growers in this state regarding the availability of and need for grapes and other fruit for wine making; and

(2) assess a fee to cover the cost of administering the registry.

(i) Information gathered through a registry established under Subsection (h) shall be posted on the department's Internet website and may be made available in any other format agreed on by the commissioner and a requestor who pays the appropriate fee for reproducing the record.

(j) The vineyard and fruit growers registry fund is an account in the general revenue fund. Fees collected under Subsection (h) shall be deposited to the credit of that account. Money in the account may be appropriated only to the department and may be used only to cover administrative and personnel costs of the department associated with administering a registry established under Subsection (h).

Added by Acts 2005, 79th Leg., Ch. 878 (S.B. 1137), Sec. 1, eff. June 17, 2005.

Sec. 12.040. TEXAS CERTIFIED RETIREMENT COMMUNITY PROGRAM. (a) In this section, "program" means the Texas Certified Retirement Community Program.

(b) The department shall establish and maintain a Texas Certified Retirement Community Program in which retirees and potential retirees are encouraged to make their homes in Texas communities that have met the criteria for certification by the department as a Texas certified retirement community.

(c) The mission of the program is to:

(1) promote Texas as a retirement destination to retirees and potential retirees both in and outside Texas;

(2) assist Texas communities in their efforts to market themselves as desirable retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle;

(3) assist in the development of retirement communities and life-care communities for economic development purposes and as a means of providing a potential workforce and enriching Texas communities; and

(4) encourage tourism to Texas in reference to an evaluation of this state as a desirable retirement location and for the visitation of those who have chosen to retire in this state.

(d) To be eligible to be a Texas certified retirement community, a community shall:

(1) through a board or panel that serves as the community's official program sponsor:

(A) complete a retiree desirability assessment, as developed by the department, to include facts regarding crime statistics, tax information, recreational opportunities, housing availability, and other appropriate factors, including criteria listed in Subsection (e); and

(B) work to gain the support of churches, clubs, businesses, media, and other entities, as necessary for the success of the program in the community;

(2) identify emergency medical services and a hospital within a 75-mile radius of the community; and

(3) submit to the department:

(A) a fee in an amount equal to the greater of:

(i) $5,000; or

(ii) $0.25 multiplied by the population of the community, as determined by the most recent census;

(B) a marketing plan detailing the mission as applied to the community, the target market, the competition, an analysis of the community's strengths, weaknesses, opportunities and dangers, and the strategies the community will employ to attain the goals of the program; and

(C) a long-term plan outlining the steps the community will undertake to maintain its desirability as a destination for retirees, including an outline of plans to correct any facility and service deficiencies identified in the retiree desirability assessment required by Subdivision (1)(A).

(e) The department shall develop and use a scoring system to determine whether an applicant will qualify as a Texas certified retirement community. In addition to the requirements of Subsection (d), the department shall consider as part of the scoring system the applicant community in relation to the following criteria:

(1) Texas' state and local tax structure;

(2) housing opportunities and cost;

(3) climate;

(4) personal safety;

(5) working opportunities;

(6) health care services and other services along the continuum of care, including home-based and community-based services, housing for the elderly, assisted living, personal care, and nursing care facilities;

(7) transportation;

(8) continuing education;

(9) leisure living;

(10) recreation;

(11) the performing arts;

(12) festivals and events;

(13) sports at all levels; and

(14) other services and facilities that are necessary to enable persons to age in the community and in the least restrictive environment, as may be identified by the Department of Aging and Disability Services.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1197, Sec. 8, eff. June 14, 2013.

(g) If the department finds that a community successfully meets the requirements of a Texas certified retirement community, not later than the 90th day after the application is submitted and approved, the department shall provide assistance to the community as determined by department rule.

(h) A community's certification under this section expires on the fifth anniversary of the date the initial certification is issued. To be considered for recertification by the department, an applicant community must:

(1) complete and submit a new application in accordance with the requirements of Subsection (d); and

(2) submit data demonstrating the success or failure of the community's efforts to market and promote itself as a desirable location for retirees and potential retirees.

(i) The Texas certified retirement community program account is an account in the general revenue fund. The account is composed of fees collected under Subsection (d). Money in the account may be appropriated to the department only for the purposes of this section, including the payment of administrative and personnel costs of the department associated with administering the program.

(j) The department may contract with a local or regional nonprofit organization to provide a service described by Subsection (g) to a community in this state.

(k) The department shall adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 214 (H.B. 1982), Sec. 1, eff. September 1, 2005.
Renumbered from Agriculture Code, Section 12.039 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(1), eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 112 (H.B. 1918), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 8, eff. June 14, 2013.

Sec. 12.041. SCHOOL BREAKFAST AND LUNCH PROGRAM. (a) The department, the Texas Education Agency, and the Health and Human Services Commission shall ensure that applicable information maintained by each entity is used on at least a quarterly basis to identify children who are categorically eligible for free meals under the national free or reduced-price breakfast and lunch program. In complying with this subsection, the department, agency, and commission shall use information that corresponds to the months of the year in which enrollment in the food stamp program is customarily higher than average.

(b) The department shall determine the feasibility of establishing a process under which school districts verify student eligibility for the national free or reduced-price breakfast and lunch program through a direct verification process that uses information maintained under the food stamp and Medicaid programs, as authorized by 42 U.S.C. Section 1758(b)(3), as amended by Section 105(a) of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. No. 108-265), and 7 C.F.R. Sections 245.6a(a)(1) and (3) and 245.6a(b)(3). If the department determines the process described by this subsection is feasible, the department may implement the process.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 1.19, eff. May 31, 2006.

Sec. 12.042. HOME-DELIVERED MEAL GRANT PROGRAM. (a) The department shall establish a home-delivered meal grant program to benefit homebound elderly and disabled people in this state. The program must be designed to help defray the costs of providing home-delivered meals that are not fully funded by the Department of Aging and Disability Services or an area agency on aging.

(b) From funds appropriated for that purpose, the department shall make grants to qualifying organizations that provide home-delivered meals to the homebound elderly and disabled. The department may use not more than five percent of those appropriated funds for the administration of the grant program.

(c) An organization applying to the department for a grant under this section must:

(1) be a governmental agency or a nonprofit private

organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, that is a direct provider of home-delivered meals to the elderly or persons with disabilities in this state;

(2) if it is a nonprofit private organization, have a volunteer board of directors;

(3) practice nondiscrimination;

(4) have an accounting system or fiscal agent approved by the county in which it provides meals;

(5) have a system to prevent the duplication of services to the organization's clients; and

(6) agree to use funds received under this section only to supplement and extend existing services related directly to home-delivered meal services.

(d) Before an organization may receive a grant from the department, the county in which the organization provides meals must make a grant to the organization. If the county makes a grant to the organization in an amount that is less than 25 cents for each person at least 60 years of age who resides in the county, according to the most recent federal decennial census, the maximum amount the department may provide to organizations in the county under Subsection (h) is reduced to an amount in proportion to the amount by which the county grant is less than 25 cents for each elderly resident.

(e) The department shall require an organization seeking a grant to file an application in a form approved by the department. The application must be notarized and signed by the organization's executive director and board chair, if applicable, be postmarked not later than November 1, and must include:

(1) the organization's name and address;

(2) the names and titles of the organization's executive director and board chair, if applicable;

(3) the name of the county in relation to which the organization is applying;

(4) the number of residents at least 60 years of age who reside in that county, according to the most recent federal decennial census;

(5) the amount of the grant awarded by that county as required by Subsection (d);

(6) the number of meals the organization delivered to elderly or disabled persons in that county during the preceding state fiscal year that were not fully funded for by the Department of Aging and Disability Services or an area agency on aging;

(7) appropriate documentation demonstrating that the organization:

(A) is a qualifying governmental agency or nonprofit private organization;

(B) has been awarded a grant by the county in relation to which the organization is applying, as required by Subsection (d); and

(C) has delivered the number of meals reported under Subdivision (6);

(8) the organization's most recent financial statement or audited financial report; and

(9) a list of the organization's board and officers.

(f) An organization that applies for a grant for meals delivered in more than one county must submit a separate application in relation to each county.

(g) The department annually shall determine:

(1) the total amount of money available for grants under this section;

(2) the number of residents at least 60 years of age in this state, according to the most recent federal decennial census; and

(3) the number of residents at least 60 years of age in each county in this state, according to the most recent federal decennial census.

(h) Except as provided by Subsections (d), (i), and (j), grants from the department to qualifying organizations in a county in a state fiscal year may not exceed an amount determined by the formula:

$$CR \times (TD/SR)$$

where:

"CR" is the number of residents at least 60 years of age in the county;

"TD" is the total amount of money appropriated to the department for that state fiscal year to make grants, less the department's administrative expenses; and

"SR" is the number of residents at least 60 years of age in this state.

(i) Not later than February 1 of each year, the department shall make a grant to each qualifying organization that has submitted an approved application under this section. Subject to Subsections (d) and (h), the department shall make grants in an amount equal to one dollar for each meal that the organization delivered to homebound elderly or disabled persons in the county in the preceding state fiscal year that was not fully funded for by the Department of Aging and Disability Services or an area agency on aging. If more than one qualifying organization delivers meals in a county, the department shall reduce the grants proportionally to each qualifying organization in that county so that the total amount of the grants to the organizations does not exceed the amount described by Subsection (h).

(j) If the total amount of the grants made by the department under Subsection (i) is less than the amount appropriated to fund the program under this section in a state fiscal year, the department shall use the unspent funds to proportionally increase the grants to each qualifying organization.

(k) The home-delivered meal fund is an account in the general revenue fund. Money in the account may be appropriated only to the department to award grants under this section and to pay for the operation of the program under this section.

(l) These funds shall not be considered by the Texas Department of Aging and Disability Services or the Area Agencies on Aging in setting unit rates.

Added by Acts 2007, 80th Leg., R.S., Ch. 92 (H.B. 407), Sec. 1, eff. May 15, 2007.

Sec. 12.046. TEXAS RURAL INVESTMENT FUND. (a) In this section:

(1) "Fund" means the Texas Rural Investment Fund.

(2) "Rural community" means a municipality with a population of less than 50,000 or a county with a population of less than 200,000.

(b) The fund is a dedicated account in the general revenue fund and consists of:

(1) appropriations of money to the fund by the legislature;

(2) gifts, grants, including federal grants, and other

donations received for the fund; and

(3) interest earned on the investment of money in the fund.

(b-1) The department shall administer the fund and select recipients of grants and loans from the fund.

(c) The fund may be used by the department only to:

(1) pay for grants or loans to public or private entities for projects in rural communities that have strong local support, provide positive return on the state's investment, and stimulate one or more of the following:

(A) local entrepreneurship;

(B) job creation or retention;

(C) new capital investment;

(D) strategic economic development planning;

(E) individual economic and community development leadership training;

(F) housing development; or

(G) innovative workforce education; and

(2) administer the grant and loan program under this section.

(d) In awarding a grant or loan of money from the fund for a project, the department shall consider:

(1) the project's effect on job creation and wages;

(2) the financial strength of the applicant;

(3) the applicant's business history;

(4) an analysis of the relevant business sector;

(5) whether there is public or private sector financial support for the project; and

(6) whether there is local support for the project.

(e) The fund is exempt from the application of Sections 403.095 and 404.071, Government Code.

(f) The department may accept grants, gifts, or donations from any source that are made for the purposes of this section. Money received under this subsection shall be deposited in the fund.

(g) The department shall adopt rules to administer this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.04, eff. September 1, 2009.

Sec. 12.047. USE OF TECHNOLOGY. The commissioner shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 8.05, eff. September 1, 2009.

Sec. 12.048. OBTAINING CRIMINAL HISTORY RECORD INFORMATION. (a) The department is authorized to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person who:

(1) applies for a license issued by the department;

(2) holds a license issued by the department;

(3) requests a determination of eligibility for a license issued by the department; or

(4) is an employee, volunteer, or intern of the department, or an applicant to be an employee, volunteer, or intern of the department.

(b) In addition to the information the department is authorized to obtain under Sections 411.122 and 411.1405, Government Code, and this section, the department is authorized to request and obtain criminal history record information through the Federal Bureau of Investigation as provided by Section 411.087, Government Code.

(c) Information provided to the department under this section and Chapter 411, Government Code, is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be disclosed to any person other than as required by a court order.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.05, eff. September 1, 2009.

For expiration of this section, see Subsection (l).

Sec. 12.050. TRADE AGRICULTURAL INSPECTION GRANT PROGRAM. (a) Using money appropriated for this purpose or money received under Subsection (g), the department may make a grant to a nonprofit organization for the purpose of promoting the agricultural processing

industry in this state by reducing wait times for agricultural inspections of vehicles at ports of entry along the border with the United Mexican States.

(b) The department shall request proposals for the award of a grant under this section. The department shall evaluate the proposals and award a grant based on the proposed program's quantifiable effectiveness and the potentially positive impact on the agricultural processing industry in this state.

(c) A grant awarded under this section must be made to an organization that has demonstrated experience working with border inspection authorities to reduce border crossing wait times.

(d) A grant recipient may use grant money received under this section only to pay for activities directly related to the purpose of the grant program as described by Subsection (a). A grant recipient may use grant money to reimburse a federal governmental agency that, at the request of the grant recipient, provides additional border agricultural inspectors or pays overtime to border agricultural inspectors at ports of entry along the border with the United Mexican States.

(e) The department shall establish procedures to administer the grant program, including a procedure for the submission of a proposal and a procedure to be used by the department to evaluate a proposal.

(f) The department shall enter into a contract that includes performance requirements with each grant recipient. The department shall monitor and enforce the terms of the contract. The contract must authorize the department to recoup grant money from a grant recipient for failure of the grant recipient to comply with the terms of the contract.

(g) The department may solicit and accept gifts, grants, and donations from any source for the purpose of awarding grants under this section.

(h) To be eligible to receive a grant under this section, a nonprofit organization must provide matching funds. The department may not award a grant to a nonprofit organization until the department certifies that the nonprofit organization has the matching funds. The amount of the grant may not exceed the amount of matching funds. The department may not require a nonprofit organization to provide matching funds in an amount that exceeds the amount of the grant.

(i) The total amount of grants awarded under this section may

not exceed $725,000 for the duration of the program.

(j) The department may adopt any rules necessary to implement this section.

(k) Not later than January 15, 2017, the department shall evaluate the performance of the program under this section and submit a report to the legislature. The report must include an evaluation of agricultural inspections affected by the program, including the extent to which the program is reducing wait times for agricultural inspections of vehicles at ports of entry along the border with the United Mexican States.

(l) Unless continued in existence by the legislature, this section expires September 1, 2017.

Added by Acts 2015, 84th Leg., R.S., Ch. 246 (S.B. 797), Sec. 1, eff. September 1, 2015.

CHAPTER 12A. GENERAL LICENSING PROVISIONS

SUBCHAPTER A. POWERS AND DUTIES OF DEPARTMENT RELATED TO LICENSING

Sec. 12A.001. APPLICABILITY OF PROVISIONS. The general licensing, regulatory, and enforcement provisions of Chapter 12 and this chapter apply to licensing and regulatory programs administered by the department under any law.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.002. CEASE AND DESIST ORDER. (a) If it appears to the 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 commissioner after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.003. RISK-BASED INSPECTIONS. For each person licensed or regulated by the department that the department may inspect:

(1) the department may conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(A) the type and nature of the person;

(B) whether there has been a prior violation by the person;

(C) the inspection history of the person;

(D) any history of complaints involving the person; and

(E) any other risk-based factor identified by the department; and

(2) the department may waive any inspection requirement under law if an emergency arises or to accommodate complaint investigation or risk-based inspection schedules.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER B. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 12A.051. INFORMATION REGARDING COMPLAINTS AND ENFORCEMENT PROCESS. (a) The department shall:

(1) inform applicants, license holders, and the public on the department's Internet website, in department brochures, and on any other available information resource about the department's enforcement process, including each step in the complaint investigation and resolution process, from initial filing through final appeal, and the opportunity to request an informal settlement conference; and

(2) inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain on request a copy of the complaint file.

(b) Except as provided by Subsection (d), the department shall provide to a license holder against whom a complaint has been filed:

(1) the allegations made against the license holder in the complaint; and

(2) on the license holder's request, any information obtained by the department in its investigation of the complaint.

(c) The department shall provide the information required under Subsection (b) in a timely manner to allow the license holder time to

respond to the complaint.

(d) The department is not required to provide the following information to a license holder:

(1) the name of a confidential informant whose testimony will not be used in any hearing as evidence against the license holder;

(2) attorney-client communications;

(3) attorney work product; or

(4) any other information that is confidential or not subject to disclosure under law, rule of evidence, or rule of civil procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.052. COMPLAINT AND VIOLATION ANALYSIS. The department shall analyze complaints filed with and violations discovered by the department to identify any trends or issues related to certain violations, including:

(1) the reason for each complaint or violation;

(2) how each complaint or violation was resolved; and

(3) the subject matter of each complaint or violation that was not within the jurisdiction of the department and how the department responded to the complaint or violation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER C. ISSUANCE AND RENEWAL OF LICENSES

Sec. 12A.101. REPLACEMENT LICENSE; FEE. The department shall issue to a license holder whose license has been lost or destroyed or whose name has been changed a replacement license if the license holder submits to the department:

(1) an appropriate application; and

(2) a fee in an amount established by department rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER D. EXAMINATIONS

Sec. 12A.151. EXAMINATION PROCEDURES. For each licensing examination administered by the department, the department shall:

(1) adopt policies and guidelines detailing the procedures for the testing process, including test admission and internal test administration procedures; and

(2) post on the department's Internet website the policies that reference the testing procedures.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

Sec. 12A.152. EVALUATION OF EXAMINATION QUESTIONS. For each licensing examination administered by the department, the department shall periodically evaluate the effectiveness of examination questions in objectively assessing an applicant's knowledge.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03, eff. September 1, 2009.

SUBCHAPTER E. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 12A.201. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The department shall offer the opportunity to conduct an informal settlement conference by telephone.

(c) The department shall:

(1) provide a license holder sufficient opportunity to indicate whether the terms of a proposed order are acceptable to the license holder;

(2) indicate in the notice of violation that the license holder has the opportunity described by Subdivision (1); and

(3) allow a license holder who does not agree with a proposed order to request an informal settlement conference.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.03,

eff. September 1, 2009.

CHAPTER 13. WEIGHTS AND MEASURES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 13.001. DEFINITIONS. (a) In this chapter:

(1) "Commercial weighing or measuring device" means a weighing or measuring device used in a commercial transaction.

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

(3) "Sell" includes barter or exchange.

(4) "Weighing or measuring device" means a scale or 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.

(b) A reference to the weight of a commodity in this chapter is a reference to the net weight of the commodity.

Acts 1981, 67th Leg., p. 1022, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2005, 79th Leg., Ch. 43 (H.B. 760), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.01, eff. September 1, 2013.

Sec. 13.002. ENFORCEMENT OF CHAPTER. (a) The department shall enforce the provisions of this chapter and shall supervise all weighing or measuring devices sold or offered for sale in this state. The department may purchase apparatus as necessary for the administration of this chapter.

(b) The department shall, to the extent practical and cost effective, allow another state agency by interagency contract to execute the department's responsibilities under Subsection (a). The contract may cover the whole state or only a specified region.

Acts 1981, 67th Leg., p. 1023, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 4.01, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 2, eff. September 1, 2009.

Sec. 13.007. CIVIL PENALTY; INJUNCTION. (a) A person who violates Subchapter B or C or a rule adopted under Subchapter B or C 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.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(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.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 19, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.02, eff. September 1, 2013.

SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES

Sec. 13.021. LEGAL STANDARDS. (a) The legal standard for the weight or measure of a commodity in this state is the standard weight or measure adopted and used by the government of the United States for that commodity. If the United States does not provide a standard weight or measure for a commodity, the standard for that commodity is that established by this subchapter.

(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.

(c) Except as otherwise provided by an express contract, a contract for work or sales by weight or measure of a commodity shall be construed in accordance with the standards of this subchapter.

(d) The standards of this subchapter shall be the guide for making any adjustment of weighing or measuring devices under the law of this state.

Acts 1981, 67th Leg., p. 1023, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.03, eff. September 1, 2013.

Sec. 13.022. STANDARD FOR LENGTH AND SURFACE. (a) The standard unit of length and surface is the yard. The yard is divided into three equal parts called feet. Each foot is divided into 12 parts called inches. All measures of extension, including lineal, superficial, and solid measures, shall be derived and ascertained from the yard.

(b) For measure of a commodity commonly sold by the yard, including cloth, the yard may be divided into halves, quarters,

eighths, and sixteenths.

(c) The rod, pole, or perch contains 5-1/2 yards. The mile contains 1,760 yards. The Spanish vara contains 33-1/3 inches.

(d) If land is measured by the English rule, the chain for measuring land shall be 22 yards long and divided into 100 equal parts called links.

(e) For land measure, the acre is measured horizontally and contains 4,840 square yards, and a square mile contains 640 acres.

Acts 1981, 67th Leg., p. 1024, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 13.023. STANDARD FOR WEIGHT. (a) The standard for weight is the standard of avoirdupois and troy weights. Other weights shall be derived and ascertained from that standard.

(b) The avoirdupois pound bears to the troy pound the ratio of 7,000 grains to 5,760 grains. The avoirdupois pound is divided into 16 equal parts called ounces.

(c) The hundredweight consists of 100 avoirdupois pounds. The ton consists of 2,000 avoirdupois pounds.

(d) The troy ounce is equal to one-twelfth of a troy pound.

Acts 1981, 67th Leg., p. 1024, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 13.024. STANDARD FOR LIQUID CAPACITY. (a) The standard unit of measure of capacity for liquids is the gallon.

(b) Except as provided by Subsections (c) and (d), 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.

(c) A mechanism or machine that is adapted to measure and deliver liquid by volume and that indicates fractional parts of a gallon shall indicate the fractional parts either in terms of binary submultiple subdivisions or in terms of tenths of a gallon.

(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.

Acts 1981, 67th Leg., p. 1024, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.04, eff. September 1, 2013.

Sec. 13.025. STANDARD FOR SOLID CAPACITY. (a) The standard unit of measure of capacity for a solid is the half bushel.

(b) The peck, half-peck, quarter-peck, quart, and pint measures for solid commodities are derived from the half bushel by successively dividing that measure by two.

(c) The bushel contains 2,150-42/100 cubic inches. The half bushel contains 1,075-20/100 cubic inches. The gallon contains 231 cubic inches.

(d) In measuring dry commodities, the measure may not be heaped but shall be stricken with a straight stick or roller.

Acts 1981, 67th Leg., p. 1024, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 13.026. CORD. (a) A cord is equal to 128 cubic feet or the contents of a space 8 feet long, 4 feet wide, and 4 feet high.

(b) A cord of wood intended for use as fuel is the amount of wood contained in a space of 128 cubic feet when the wood is ranked and well-stowed and one-half the kerf of the wood is included.

Acts 1981, 67th Leg., p. 1024, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 13.027. STANDARD NET WEIGHT OR COUNT SET BY RULE. (a) The department by rule may establish a standard net weight or net count for any commodity and prescribe tolerances for those standards as the department considers necessary for the proper protection of the public.

(b) A person violates this chapter if the person fails or refuses to comply with the rules adopted under this section.

Acts 1981, 67th Leg., p. 1025, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.05, eff. September 1, 2013.

Sec. 13.028. STANDARD WEIGHT PER BUSHEL FOR CERTAIN COMMODITIES. If the following commodities are sold by the bushel and no agreement is made by the parties as to the measurement or weight, the bushel shall consist of the listed number of pounds:

barley	
48 pounds	shelled corn
56 pounds	flax seed
56 pounds	oats
32 pounds	rye
56 pounds	wheat
60 pounds	cottonseed

Acts 1981, 67th Leg., p. 1025, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 13.029. EXEMPTION OF WEIGHING OR MEASURING DEVICES. The department by rule may exempt a weighing or measuring device from a requirement established by this chapter if the department determines that imposing or enforcing the requirement:

(1) is not cost-effective for the department;

(2) is not feasible with current resources or standards; or

(3) will not substantially benefit or protect consumers.

Added by Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 4, eff. September 1, 2009.

Sec. 13.030. SALE OF COMMODITIES BY NET WEIGHT. (a) If a commodity is sold on the basis of weight, the net weight of the commodity shall be employed in the sale. A contract concerning goods sold on the basis of weight shall be construed to employ net weight.

(b) This section does not apply to bales of cotton.

(c) A person commits an offense if, in the sale of a commodity by weight, the person employs a weight other than net weight.

Acts 1981, 67th Leg., p. 1026, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 13.031. SALE OF COMMODITIES BY PROPER MEASURE. (a)

Except as otherwise provided by this section, a liquid commodity shall be sold by liquid measure. A commodity, including a good, ware, or merchandise item, that is not liquid shall be sold by length, weight, or numerical count if the commodity has been or is capable of being sold by one of those measures.

(b) A liquid commodity may be sold by other than liquid measure if sold for immediate consumption on the premises where sold.

(c) A liquid commodity may be sold by weight if there is a general consumer usage to express the quantity of the commodity by weight and the expression gives accurate information as to the weight of the commodity.

(d) This section does not prevent the sale of:

(1) fruits, vegetables, or other dry commodities in the standard barrel or by other method provided for by state or federal law;

(2) berries and small fruits in boxes as provided for by other state law; or

(3) vegetables or fruits by the head or bunch if the vegetable or fruit is usually sold in that manner.

(e) This section does not apply to a commodity in an original package, which includes any wholesale or retail package, carton, case, can, barrel, bottle, box, phial, or other receptacle, or the coverings or wrappings of a commodity, that is put up by the manufacturer, that may be labeled, branded, stenciled, or otherwise marked, and that makes one complete package.

(f) A person violates this chapter 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.

Acts 1981, 67th Leg., p. 1026, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.06, eff. September 1, 2013.

Sec. 13.032. STANDARD FILL AND QUANTITY LABELING FOR COMMODITIES IN PACKAGE FORM. (a) For the purpose of preventing the sale of commodities in package form with containers that mislead the purchaser as to quantity, the department by rule may establish a

standard fill for commodities in package form. The rules must be reasonable with respect to the physical characteristics of the container, the prevailing method of handling and transporting the package, and generally accepted good commercial practice in filling methods. The rules shall provide for reasonable variations and tolerances.

(b) Except as otherwise provided by this section, a commodity in package form shall be plainly and conspicuously marked on the outside of the package with:

(1) the net quantity of the contents in terms of weight, measure, numerical count, or a combination thereof, which is generally used by consumers and users to express the quantity of such commodity; and

(2) the name and place of business of the manufacturer, packer, or distributor.

(c) The department by rule shall provide exemptions from the requirements of Subsection (b)(1) of this section for small packages and from the requirements of Subsection (b)(2) of this section for packages sold on the premises where packed.

(d) The department by rule shall prescribe reasonable variations or tolerances for the statement of net quantity required under Subsection (b)(1) of this section.

(e) A box or carton used for shipping purposes containing a number of packages that are individually marked in accordance with Subsection (b) of this section is not required to be marked in accordance with that subsection.

(f) A commodity is in package form if for wholesale or retail it:

(1) is in a package, carton, case, can, box, bag, barrel, bottle, or phial, on a spool or similar holder, in a container or band, in a roll, ball, coil, skein, or other receptacle, or in coverings or wrappings of any kind;

(2) is put up by the manufacturer or, if put up prior to ordering, by the vendor;

(3) is suitable for labeling, branding, stenciling, or marking in another manner; and

(4) makes one complete package.

(g) This section does not apply to bales of cotton, commodities in package form of which the manner of sale is regulated by other law, or to stationery in tablet form.

(h) A person commits an offense if the person sells, keeps for sale, or offers or exposes for sale a commodity in package form that is:

(1) not labeled in accordance with this section;

(2) in a container that is made, formed, filled, or wrapped so as to mislead the purchaser as to the quantity of the contents; or

(3) in a container the contents of which fall below the standard fill prescribed by rule under Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1026, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1985, 69th Leg., ch. 276, Sec. 1, eff. Aug. 26, 1985.

Sec. 13.033. SALE OF MILK OR CREAM IN NONSTANDARD CONTAINER. A person violates this chapter 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.

Acts 1981, 67th Leg., p. 1027, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.07, eff. September 1, 2013.

Sec. 13.034. SALE OF CHEESE, MEAT, OR MEAT FOOD PRODUCT BY NONSTANDARD WEIGHT. (a) Except as otherwise provided by this section or Section 13.032 of this code, cheese, meat, and meat food products shall be sold by standard net weight.

(b) Cheese, meat, or a meat food product may be sold by other than standard net weight if sold for immediate consumption on the premises where sold.

(c) Poultry may be sold by live weight if weighed at the time of sale. Poultry dressed or killed prior to the time of sale, whether cooked or uncooked, shall be sold by net weight at the time of sale. Fresh-cooked poultry may be sold by the piece or by the head.

(d) A person violates this chapter 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.

(e) In this section:

(1) "Meat or meat food product" includes fresh, cured, or salt meats; poultry; fish; sausage; chili; headcheese; souse meat; loaf meat; boneless meat; shredded meat; hamburger; and any other manufactured, prepared, or processed meat or meat food product.

(2) "Poultry" includes turkeys, chickens, ducks, geese, guineas, squabs, and all other domesticated fowl.

Acts 1981, 67th Leg., p. 1027, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.08, eff. September 1, 2013.

Sec. 13.035. PRICE ADVERTISEMENT; MISREPRESENTATION OF PRICE OR QUANTITY. (a) If a price sign, card, tag, poster, or other advertisement displaying the price of a commodity or other item includes a whole number and a fraction, the figures in the fraction shall be of proportionate size and legibility to those of the whole number.

(b) A person violates this chapter if the person:

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

(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.

Acts 1981, 67th Leg., p. 1028, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.09, eff. September 1, 2013.

Sec. 13.036. FALSE REPRESENTATION OF COMMODITY QUANTITY. A person violates this chapter 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.

Acts 1981, 67th Leg., p. 1028, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.10, eff. September 1, 2013.

Sec. 13.037. USE OF INCORRECT WEIGHING OR MEASURING DEVICE. (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.

(b) For the purpose of this section, a weighing or measuring device is incorrect if it:

(1) does not conform as closely as practicable to the official standards;

(2) is not accurate;

(3) is of a construction that is not reasonably permanent in adjustment or does not correctly repeat its indications;

(4) facilitates the perpetration of fraud; or

(5) does not conform to the specifications and tolerances established by the department under Section 13.114.

Acts 1981, 67th Leg., p. 1028, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.11, eff. September 1, 2013.

Sec. 13.038. SALE OF COMMODITY IN VIOLATION OF SUBCHAPTER. A person violates this chapter 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.

Acts 1981, 67th Leg., p. 1029, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.12, eff. September 1, 2013.

Sec. 13.039. TESTING OF PACKAGE BY DEPARTMENT. (a) The department shall from time to time weigh or measure a package or an amount of any commodity that is kept or offered for sale, sold, or in the process of delivery, in order to determine:

(1) if the commodity is of the amount or quantity represented; or

(2) if the commodity is being offered for sale or sold in accordance with law.

(b) If the department finds that a package or any lot of a commodity contains less of the commodity than the amount represented, the department may seize the package or the commodity as evidence.

(c) A person commits an offense if the person or the person's employee or agent refuses to exhibit a commodity being sold or offered for sale at a given weight or quantity, or ordinarily sold in that manner, to the department for testing and proving as to quantity.

Acts 1981, 67th Leg., p. 1029, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 5, eff. September 1, 2009.

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 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,

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) or until the commissioner finds that the commodity or weighing or measuring device is in compliance with this chapter.

(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 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.

Acts 1981, 67th Leg., p. 1029, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.13, eff. September 1, 2013.

Sec. 13.041. PENALTIES; DEFENSE. (a) An offense under Section 13.030, 13.032, 13.037, or 13.039 is a Class C misdemeanor.

(b) It is a defense to prosecution or to the imposition of a civil or administrative penalty for a violation of Sections 13.030-13.038 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.

Acts 1981, 67th Leg., p. 1029, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 20, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.14, eff. September 1, 2013.

SUBCHAPTER C. INSPECTION AND REGISTRATION OF WEIGHING OR MEASURING DEVICES

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 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.15, eff. September 1, 2013.

Sec. 13.101. 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 least once every four years, or more often as required 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.

(b) The department may, 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) 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.

Acts 1981, 67th Leg., p. 1030, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 21, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 122, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 200, Sec. 4(b), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 7, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.16, eff. September 1, 2013.

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 person who owns or operates a commercial weighing or measuring device shall register the device with the department before using the device for a commercial transaction.

(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.

(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.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 57(a), eff. Sept. 1, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 43 (H.B. 760), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 8, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.17, eff. September 1, 2013.

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.

(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 not use 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.

Acts 1981, 67th Leg., p. 1032, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 4.03, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 11, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 28(7), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.18, eff. September 1, 2013.

Sec. 13.112. TESTS FOR STATE INSTITUTIONS. As requested by the comptroller or the governing body of a state institution, the department shall test each weighing or measuring device used by a state institution for any purpose, including a weighing or measuring device used in checking the receipt and distribution of supplies. The department shall report results of the test to the chairman of the governing body of the institution.

Acts 1981, 67th Leg., p. 1033, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 23, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.80, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 12, eff. September 1, 2009.

Sec. 13.113. STANDARDS USED IN INSPECTION. (a) The standards of weights and measures maintained by the department 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.

(b) The department shall maintain the primary standards in a safe and suitable place in the offices of the department. The standards may not be moved except for repairs or certification. The department shall maintain the standards in good order and shall submit them to the National Institute of Standards and Technology or to a laboratory approved by the National Institute of Standards and Technology for certification at least once each 10 years.

(c) In addition to the standards kept by the state, the

department shall maintain a complete set of copies of the original standards for use in adjusting local standards or in the performance of other official duties. The department may purchase additional sets of standards as necessary for use by a department inspector or other department personnel.

(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. The copies used by a city may be of any suitable material or construction that the city requests, subject to approval by the department.

(e) The department, or a metrology laboratory certified by the National Institute of Standards and Technology and approved by the department, shall inspect and correct the standards used by a department inspector, other department employee, or individual or business licensed by the department to perform device maintenance activities under Subchapter I.

(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 inspected under this section.

Acts 1981, 67th Leg., p. 1033, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 24, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 113 (H.B. 1527), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.19, eff. September 1, 2013.

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

Acts 1981, 67th Leg., p. 1033, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 25, eff. Sept. 1, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 14, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.20, eff. September 1, 2013.

Sec. 13.115. FEES FOR DEPARTMENT INSPECTION. (a) The department may collect a fee for each test of a weighing or measuring device required by this subchapter or performed on request of the owner.
(b) Repealed by Acts 1995, 74th Leg., ch. 419, Sec. 10.09(5), eff. Sept. 1, 1995.
(c) The department shall charge a fee, as provided by department rule, for tolerance testing of a weight by the department's metrology laboratory.
(d) The department shall charge a fee, as provided by department rule, for tolerance testing of a measure by the department's metrology laboratory.
(e) The department shall charge a fee, as provided by department rule, for precision testing performed by the department's metrology laboratory.
(f) The department shall charge a fee, as provided by department rule, for precision testing of tapes, rules, glassware, and other weighing or measuring devices performed by the department's metrology laboratory.
(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 924, Sec.

3.27(2), eff. September 1, 2013.

(h) This section does not prevent a city from operating an agency for the testing of weights and measures.

Acts 1981, 67th Leg., p. 1034, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4282, ch. 682, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 239, Sec. 57(c), (d), eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.02, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.06, 10.09(5), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 15, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.27(2), eff. September 1, 2013.

Sec. 13.1151. FEES FOR REGISTRATION AND INSPECTION. The department may charge the owner or operator of a weighing or measuring device a fee, as provided by department rule, to recover the costs of registration and inspection of a weighing or measuring device required to be registered or inspected under this chapter.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 57(a), eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.03, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.07, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 43 (H.B. 760), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 43 (H.B. 760), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 43 (H.B. 760), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 16, eff. September 1, 2009.

Sec. 13.117. REFUSING TO ALLOW TEST OF WEIGHING OR MEASURING

DEVICE. A person commits an offense if the person 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.

Acts 1981, 67th Leg., p. 1035, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 16, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.22, eff. September 1, 2013.

Sec. 13.118. HINDERING DEPARTMENT PERSONNEL. A person commits an offense if the person hinders or obstructs in any way the department, a department inspector or other department personnel in the performance of official duties.

Acts 1981, 67th Leg., p. 1035, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 16, eff. September 1, 2009.

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.

Acts 1981, 67th Leg., p. 1035, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 16, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.23, eff. September 1, 2013.

Sec. 13.120. SALE OR USE OF INCORRECT WEIGHING OR MEASURING DEVICE. (a) The department may condemn and prohibit the sale or distribution of any incorrect weighing or measuring device that is

sold, offered for sale, or about to be sold in this state.

(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.

Acts 1981, 67th Leg., p. 1035, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 17, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.24, eff. September 1, 2013.

Sec. 13.121. DISPOSING OF CONDEMNED WEIGHING OR MEASURING DEVICE. A person commits an offense if the person or the person's servant or agent disposes of a weighing or measuring device condemned under Section 13.111 or 13.120 in a manner contrary to those sections.

Acts 1981, 67th Leg., p. 1036, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 17, eff. September 1, 2009.

Sec. 13.122. PENALTIES. An offense under each of Sections 13.117 through 13.121 is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1036, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 26, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 369, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.25, eff. September 1, 2013.

SUBCHAPTER E. PUBLIC WEIGHER

Sec. 13.251. DEFINITION. In this subchapter, "public weigher" means a business certified under this subchapter to issue an official certificate declaring the accurate weight or measure of a commodity that the business is requested to weigh.

Acts 1981, 67th Leg., p. 1039, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1981, 67th Leg., p. 2592, ch. 693, Sec. 14, eff. Sept. 1, 1981.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.01, eff. September 1, 2009.

Sec. 13.255. CERTIFICATE. (a) A public weigher may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

(b) A public weigher must submit a fee, as provided by department rule, with the application for a certificate of authority.

Acts 1981, 67th Leg., p. 1040, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1981, 67th Leg., p. 2592, ch. 693, Sec. 14, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 239, Sec. 59, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 30, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.08, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.02, eff. September 1, 2009.

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) The department shall revoke, modify, or suspend the certificate of authority of a public weigher, assess an administrative penalty, place on probation the public weigher whose certificate has been suspended, or reprimand a public weigher for a violation of this subchapter or a rule adopted by the department under this subchapter.

(b) If a certificate suspension is probated, the department may require the public weigher to:

(1) report regularly to the department on matters that are

the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the public weigher attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a public weigher's certificate, the public weigher is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 31, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.03, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.03, eff. September 1, 2009.

Sec. 13.256. BOND. Each public weigher shall execute a bond in accordance with rules adopted by the department. The bond must be conditioned on the accurate weight or measure of a commodity being reflected on the certificate issued by the public weigher, on the protection of a commodity that the public weigher is requested to weigh or measure, and on compliance with all laws and rules governing public weighers. The bond is not void on first recovery. A person injured by the public weigher may sue on the bond.

Acts 1981, 67th Leg., p. 1040, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1981, 67th Leg., p. 2593, ch. 693, Sec. 14, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.04, eff. September 1, 2009.

Sec. 13.257. RECORDING OF WEIGHTS AND MEASURES. (a) On each certificate of weight or measure of a commodity that a public weigher issues, the public weigher shall include the:

(1) time and date that the weight or measure of the

commodity was taken;

(2) signature and license number of the public weigher; and

(3) seal of the department.

(b) A public weigher shall retain in a well-bound book a copy of each certificate. The department and members of the general public may inspect the record on request.

Acts 1981, 67th Leg., p. 1041, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2593, ch. 693, Sec. 14, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 50, Sec. 3, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.05, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 19, eff. September 1, 2009.

Sec. 13.258. DUTIES OF THE DEPARTMENT. The department shall supervise public weighers and shall adopt rules necessary to enforce this subchapter. On application by an interested party, the department shall review the weight or measure of a commodity certified by a public weigher and may require the commodity to be reweighed or remeasured.

Acts 1981, 67th Leg., p. 1041, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2593, ch. 693, Sec. 14, eff. Sept. 1, 1981.

Sec. 13.259. PENALTY FOR ISSUING A FALSE CERTIFICATE. (a) A public weigher who intentionally or knowingly issues a certificate of weight or measure of a commodity giving a false weight or measure for the commodity commits an offense.

(b) An offense under this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1041, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2593, ch. 693, Sec. 14, eff. Sept. 1, 1981.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.06, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 20, eff. September 1, 2009.

Sec. 13.260. PENALTY FOR ISSUING CERTIFICATE WITHOUT AUTHORITY. (a) A person who intentionally or knowingly issues an official certificate of weight or measure of a commodity without first obtaining a certificate of authority under Section 13.255, who issues an official certificate of weight or measure of a commodity after revocation of the person's certificate of authority, or who issues an official certificate of weight or measure of a commodity without executing a bond as required under Section 13.256 commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1041, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1981, 67th Leg., p. 2593, ch. 693, Sec. 14, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 21, eff. September 1, 2009.

Sec. 13.261. RULES. The department shall adopt rules governing the bond requirements and fees imposed under this subchapter.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 60, eff. Sept. 1, 1985.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.07, eff. September 1, 2009.

SUBCHAPTER I. LICENSING OF SERVICE TECHNICIANS AND SERVICE COMPANIES

Sec. 13.451. DEFINITIONS. In this subchapter:

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

(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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26,

eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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

(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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 3.26, eff. September 1, 2013.

CHAPTER 14. REGULATION OF PUBLIC GRAIN WAREHOUSE OPERATORS

SUBCHAPTER A. DEFINITIONS

Sec. 14.001. DEFINITIONS. (a) In this chapter:

(1) "Depositor" means a person who:

(A) delivers grain to a public grain warehouse for storing of the grain for hire, handling of the grain for hire, or shipping of the grain for hire;

(B) is the owner or legal holder of an outstanding receipt for grain stored in the public grain warehouse issuing the receipt; or

(C) is lawfully entitled to possession of grain stored in a public grain warehouse.

(2) "Grain" means wheat, grain sorghum, corn, oats, barley, rye, soybeans, or any other grain, peas, or beans for which federal grain standards are established.

(3) "Open storage grain" means grain that:

(A) is received for storage by a public grain warehouse located in this state;

(B) is not covered by a negotiable warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which it is stored.

(4) "Public grain warehouse" means a building, bin, or similar structure located in this state and used for:

(A) the storing of grain for hire, shipping of grain for hire, or handling of grain for hire; or

(B) the purchasing and selling of grain, including grain on which payment is deferred.

(5) "Receipt" means a negotiable Texas grain warehouse receipt issued by a warehouse operator licensed under this chapter.

(6) "License" includes a renewal of or an amendment to a license.

(7) "Scale weight ticket" means a load slip other than a receipt given to a depositor or other person by a warehouse operator licensed under this chapter on:

(A) initial delivery of the grain to the warehouse; or

(B) weighing of the grain on the grain warehouse operator's scale, regardless of the destination of the grain.

(8) "Receipted grain" means grain that is stored in a public grain warehouse and for which a Texas grain warehouse receipt has been issued and has not been canceled.

(9) "Warehouse operator" means a person engaged in the business of operating a public grain warehouse.

(b) For purposes of this chapter, the term "public grain warehouse" as defined by Subsection (a)(4) does not include railcars, trucks, boats, or other vehicles when used to transport grain.

(c) For purposes of this chapter, in those sections that require the warehouse operator to cooperate with or provide information to the department or issue documents or deliver grain to customers of the warehouse operator and in those sections that require notice to be provided to the warehouse operator by the department, the term "warehouse operator" includes all employees, agents, or other persons authorized by the warehouse operator to issue receipts or scale weight tickets or sign contracts or other agreements.

Acts 1981, 67th Leg., p. 1046, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 14.011. LIMITATION OF CHAPTER. This chapter does not apply to:

(1) a public grain warehouse covered by a license for the operation of a public grain warehouse issued by the United States Department of Agriculture or other federal agency;

(2) an individual producer-owner who does not receive from others grain for storage or handling for hire;

(3) a person whose business is manufacturing grain or selling manufactured grain and who receives all grain with the intent to manufacture the grain or sell manufactured grain; or

(4) a person who receives grain with the intent of using the grain for planting seed or for feeding livestock on the premises where the grain is received.

Acts 1981, 67th Leg., p. 1046, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.002 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.012. BUSINESS INFORMATION. (a) Except as provided by

Subsection (b), financial information of a warehouse operator provided to the department is confidential and not subject to public disclosure.

(b) Notwithstanding Subsection (a), financial information of a warehouse operator provided to the department may be disclosed:

(1) without sealing in an administrative proceeding commenced by the department against the warehouse operator;

(2) to a local or state law enforcement officer, a county attorney, a district attorney, or the attorney general, acting either independently or on behalf of the department, investigating the warehouse operator;

(3) in a civil proceeding commenced by the warehouse operator against the department;

(4) in response to a subpoena from a party in a civil proceeding commenced against the warehouse operator;

(5) to the issuer of the warehouse operator's bond or letter of credit;

(6) to the public after:

(A) revocation of the warehouse operator's license;

(B) a voluntary closeout of all of the license holder's facilities in this state;

(C) a petition for bankruptcy has been filed; or

(D) a receiver for the warehouse operator's assets has been appointed; or

(7) to any federal agency or any agency of another state conducting a compliance inspection or criminal or civil investigation involving the handling, storing, shipping, selling, purchasing, or receipt of grain.

(c) In this section, "financial information" means:

(1) a financial statement or other document provided by the warehouse operator to the department to evaluate net worth requirements under Section 14.031(e);

(2) a financial audit provided by the warehouse operator to the department; and

(3) if the warehouse operator is subject to an ongoing investigation by the department:

(A) the price of grain paid by the warehouse operator to a depositor or other seller of grain delivered to or stored or handled by the warehouse operator;

(B) the price of grain paid by or to the warehouse

operator by a depositor or other purchaser of grain delivered to or stored or handled by the warehouse operator; and

(C) the terms of payment for a price described by Paragraph (A) or (B).

(d) Notwithstanding any other provisions of this section:

(1) a party to a contract or other agreement with a warehouse operator may obtain a nonredacted copy of the contract or agreement; and

(2) a person who authored or contributed to the creation of financial information may be provided access to the financial information for the purpose of confirming the authenticity, truthfulness, or accuracy of the information.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 1, eff. September 1, 2011.

Sec. 14.013. RIGHT TO INTERVENE AND NOTIFICATION OF DEPARTMENT. (a) The department may intervene in a suit for receivership, garnishment, bankruptcy, or any other legal action affecting the assets of a warehouse operator licensed under this chapter or the grain assets of a depositor in a warehouse operated under a license issued by the department, including, to assert the rights of depositors not joined in the suit, a suit brought against a bond or surety under Section 14.065.

(b) Any person who files a suit for receivership, garnishment, or bankruptcy or who commences any other legal action affecting the assets of a warehouse operator licensed under this chapter or the grain assets of a depositor in a warehouse operated under a license issued by the department, including a suit against a bond or surety under Section 14.065, must give notice to the department of the suit or legal action.

(c) Notice under this section must be in writing and delivered to the department by certified mail, registered mail, or commercial delivery service not later than the 20th day after the date on which the suit or legal action is commenced.

(d) The judgment in an action described by Subsection (a) is

voidable if the notice required by this section is not provided.

(e) The court in which a suit or other legal action described by Subsection (a) is commenced may impose appropriate sanctions against a party who fails to provide the notice required by this section.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.014. RECEIVERSHIP AFFECTING WAREHOUSE ASSETS. (a) A person appointed receiver for the assets of a warehouse operator licensed under this chapter is not required to obtain a license from the department if the person:

(1) is bonded and insured as described by Subsection (b); and

(2) after being appointed, does not:

(A) receive additional grain for storing for hire, handling for hire, or shipping for hire; or

(B) purchase grain for resale.

(b) A person appointed receiver shall maintain:

(1) a bond in the same amount required for a licensed warehouse operator; and

(2) casualty insurance in the same amount and type as required for a licensed warehouse operator.

(c) A person appointed receiver shall file proof of proper bonding and verification of insurance with the department on or before the date the person is appointed to act as receiver.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.015. POWERS AND DUTIES OF DEPARTMENT. The department shall administer this chapter and may:

(1) investigate the storing, shipping, and handling of grain and complaints relating to these activities through the inspection of:

(A) any public grain warehouse;

(B) the grain stored in any warehouse; or

(C) all property and records pertaining to a warehouse;

(2) determine whether a warehouse for which a license has been issued or applied for is suitable for properly storing, shipping, or handling grain that is stored in or expected to be stored in the warehouse;

(3) include field seed within the definition given to "grain" by Section 14.001;

(4) require that a warehouse operator keep records or submit reports the department determines are necessary in the administration of this chapter;

(5) require a warehouse operator or depositor to terminate storing, shipping, and handling agreements within a time specified by the department:

(A) on closeout or revocation of the warehouse operator's license;

(B) if grain has been abandoned by the warehouse operator or a depositor and the warehouse operator or depositor cannot be located after diligent effort; or

(C) on issuance of an injunction ordering an unlicensed warehouse operator to cease operations;

(6) prescribe forms, including the form of receipts, bonds, or applications for licenses;

(7) for purposes of determining compliance with this chapter or amounts due to a depositor in an action taken by the department against a surety or surety instrument under this chapter, determine a warehouse operator's specific obligations to a depositor, including:

(A) the type, quantity, or quality of open storage or receipted grain due a depositor;

(B) the payment owed a depositor if a shortage or variance exists in the type, quantity, or quality of a depositor's open storage or receipted grain;

(C) the time and manner of delivery of grain due a depositor; and

(D) whether a warehouse operator has failed to deliver a depositor's open storage or receipted grain within a reasonable time;

(8) by written order require a warehouse operator to deliver grain of a particular type, quantity, and quality to a depositor at a particular time and in a particular manner based on the department's determination that the required delivery of grain is

due the depositor;

(9) classify grain by category, including open storage, receipted, identity-preserved, company-owned, and abandoned grain, and adopt rules regarding the storage, shipping, or handling of classified grain, including recordkeeping and accounting requirements;

(10) seize the records of a warehouse operator, including any electronic records or the equipment or media on which the records are stored, during a period of suspension of a warehouse operator's license;

(11) seal or post as sealed, or both seal and post as sealed, the warehouse of a warehouse operator:

(A) whose license has been suspended or revoked;

(B) whose license has expired; or

(C) who is unlicensed;

(12) seal or post as sealed, or both seal and post as sealed, a warehouse that is found to be unsafe for inspection or unsuitable for the storage of grain;

(13) during reasonable hours and to determine compliance with this chapter, enter any facility where the department reasonably believes grain is being handled, stored, shipped, purchased, or sold to examine:

(A) the facility's storage, shipping, handling, and financial records;

(B) grain; and

(C) physical structures;

(14) determine the suitability of a warehouse for storing, shipping, or handling grain or for adequate and safe inspection and, if found unsuitable for any of those purposes, order corrective action;

(15) require the warehouse operator to notify the department regarding:

(A) the handling of commodities that may pose a hazard to humans, animals, the grain of other depositors in the warehouse operator's warehouse, or the grain industry;

(B) existing hazards to inspection, including recent or ongoing fumigations of warehouse facilities and unsafe or inoperable warehouse equipment or structures; or

(C) any change in ownership, management, or legal or financial status of a warehouse licensed under this chapter;

(16) require by rule that sales, purchase, or brokerage agreements between a warehouse operator and a producer be in writing and contain written terms or provisions the department considers appropriate to protect producers, depositors, and warehouse operators and to ensure the department's ability to carry out its regulatory functions under this chapter;

(17) regulate a warehouse operator's temporary storage of grain in a non-warehouse location or facility;

(18) require segregation of grain requiring identity preservation;

(19) enter into cooperative agreements with agencies of the federal government or other states to carry out the purposes of this chapter;

(20) recover the unused warehouse receipts of a warehouse operator:

(A) during any period of probation or suspension of the warehouse operator's license;

(B) on revocation or voluntary surrender of the warehouse operator's license; or

(C) during any period in which the warehouse operator is not licensed, including after a failure to timely renew the license;

(21) order corrective action or impose any reasonable condition of probation necessary to accomplish the regulatory goals authorized by this chapter; and

(22) adopt rules necessary to carry out the provisions of this chapter.

Acts 1981, 67th Leg., p. 1047, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 553, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 3.06, eff. Sept. 1, 1995. Renumbered from Sec. 14.003 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. LICENSING

Sec. 14.021. LICENSE REQUIRED. A person may not operate a public grain warehouse without first obtaining from the department a license in the person's name covering the warehouse.

Acts 1981, 67th Leg., p. 1047, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Renumbered from Sec. 14.004 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.022. LICENSING OF MULTIPLE WAREHOUSES. (a) In this section:

(1) "Combination" means a group of two or more public grain warehouses or facilities operated under a single set of complete records. For purposes of this chapter, a combination is treated as if it were a single public grain warehouse.

(2) "Facility" means two or more public grain warehouses located in close proximity on the same general location. For purposes of this chapter, and except when part of a combination, a facility is treated as if it were a single public grain warehouse.

(b) A warehouse operator may operate all public grain warehouses or facilities within an area no larger than 60 miles in diameter as a combination if a single license covering the combination is obtained from the department and:

(1) a single recordkeeping system covering only warehouses within the combination is maintained by the warehouse operator;

(2) a single, unique set of sequentially numbered receipts containing all information required by department rule and bearing the name of the license holder and a unique combination name, but not bearing individual warehouse or facility names, is used for the combination;

(3) for each scale operated by the warehouse operator, the warehouse operator issues and maintains a single, unique set of sequentially numbered scale weight tickets containing all information required by department rule and bearing the name of the license holder and a unique name identifying the facility where the scale is located;

(4) a single daily position report covering all storage obligations of the combination and only the combination, including company-owned grain, and containing all information required by department rule is maintained;

(5) all original warehouse operator records, except for scale weight tickets, relating to transactions or storage obligations involving the combination are maintained at a single location and separate from all other businesses and separately licensed warehouse operations of the warehouse operator; and

(6) except as provided by department rule, a single unique bond or bond substitute is used to cover the combination.

(c) Except as permitted while operating a combination, a warehouse operator may not combine or intermingle assets, storage obligations, liabilities of any kind, records or record entries, contractual obligations, other transactions of any kind, or any other business or operating information from different warehouses or businesses owned, managed, or operated by the warehouse operator. Each licensed combination or individually licensed facility shall be operated as a separate entity under a single, unique name and, except as provided by department rule, shall be covered by a single, separate bond or bond substitute.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.023. LICENSING PROCEDURE. (a) The department may issue, renew, or amend a license following a determination that:

(1) the applicant has filed an acceptable bond, a financial statement in a form prescribed by the department, and proof of casualty insurance required by this chapter;

(2) the warehouse is suitable for storage of grain and inspection by department personnel;

(3) the applicant has complied with this chapter and rules adopted under this chapter; and

(4) the applicant has met the net worth or deficiency bond requirements of Section 14.031(e).

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

(c) If an applicant for a license previously operated a grain warehouse in this state or another state and that warehouse ceased to operate while the applicant was the operator, the applicant must submit with the application evidence acceptable to the department

that all debts from the previous operation evidenced by receipts have been satisfied. The department may not issue a license to an applicant who the department determines has not satisfied all such debts from a previous operation.

Acts 1981, 67th Leg., p. 1047, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4283, ch. 682, Sec. 2, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 50, Sec. 3, eff. April 30, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 32, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.05, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.11, eff. Sept. 1, 1995. Renumbered from Sec. 14.005 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.024. REQUIREMENT FOR INCREASING CAPACITY. A warehouse operator may not use any increased warehouse capacity without first obtaining written approval from the department.

Acts 1981, 67th Leg., p. 1048, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.007 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. BONDING

Sec. 14.031. BOND. (a) In accordance with this section, each applicant for a license shall file or have on file a bond with the department.

(b) The bond must:

(1) be payable to the State of Texas;

(2) be executed by the applicant as principal;

(3) be issued by a corporate surety licensed to do business as surety in the State of Texas; and

(4) be in a form and contain terms and conditions prescribed by the department.

(c) The bond must be conditioned on faithful performance of:

(1) each obligation of a warehouse operator as to receipted grain and open storage grain under this chapter and rules adopted under this chapter, from the effective date of the bond until the license is revoked or the bond is canceled, whichever occurs first, whether or not the warehouse remains licensed; and

(2) except for a contract for the purchase of grain or to act as broker for the grain, each obligation of a warehouse operator under any contract with a depositor that exists on the effective date of the bond or is assumed after the effective date of the bond and before the license is revoked or the bond is canceled, whichever occurs first and whether or not the warehouse remains licensed.

(d) The bond must be in an amount of not less than $35,000 and be based on 10 cents per bushel of storage capacity, not to exceed a maximum of $500,000.

(e) If the actual net worth of an applicant equals less than the greater of either 25 cents per bushel of storage capacity or $200,000, the applicant shall file a deficiency bond in an amount equal to the difference between the actual net worth and the greater of either $200,000 or the amount determined by multiplying 25 cents times each bushel of storage capacity in the applicant's warehouse. A deficiency bond is in addition to the bond required of an applicant by this section.

(f) Except as provided by department rule, the applicant must give a single bond meeting the requirements of this section to cover warehouses licensed as a single facility or combination. A single bond may not be used to cover more than one individually licensed facility, more than one combination, or one or more individually licensed facilities and one or more combinations.

(g) The liability of the surety of a bond required by this chapter is limited to the face amount of the bond and does not accumulate for each successive license period during which the bond is in force.

(h) Subject to the approval of the department, a warehouse operator may deposit the following with the department, for the term of the license plus two years, in lieu of a bond required by this section:

(1) cash;

(2) an irrevocable letter of credit, payable to the State of Texas; or

(3) a certificate of deposit from a federally insured bank or savings and loan institution authorized to do business in this state, assigned to the State of Texas.

(i) The cash, letter of credit, or certificate of deposit under Subsection (h) must be in the same amount or have a value in the same amount as required for the warehouse bond.

(j) Any interest or income earned on an assigned certificate of deposit accrues to the owner of the certificate during the time of the assignment.

Acts 1981, 67th Leg., p. 1048, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 50, Sec. 2, eff. April 30, 1987.
Renumbered from Sec. 14.009 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 2, eff. September 1, 2011.

Sec. 14.032. ADDITIONAL BOND. (a) If the department determines that an approved bond is insufficient, the department shall require the warehouse operator to give additional bond.

(b) If a license has been suspended or revoked or has expired, the department may require a bond from the warehouse operator to protect depositors of grain for as long as any receipts or open storage accounts remain outstanding.

Acts 1981, 67th Leg., p. 1049, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Renumbered from Sec. 14.012 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.033. BOND CANCELLATION. (a) A warehouse operator may not cancel a bond approved by the department unless the department first gives written approval of a substitute bond.

(b) The surety may cancel a bond by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of a bond may not be effective before the 91st day following the day on which the surety mails notice of intent to cancel. On receipt of notice of cancellation of a bond, the department shall promptly notify the warehouse operator involved. Liability under the bond ceases to accrue on the effective date of cancellation. Notwithstanding cancellation under this section, the department or a depositor may collect under the bond for any claim that arose during the period during which the bond was in effect, provided that the claim is filed within the applicable limitations period established under Section 14.065.

(c) The surety shall send a copy of the notice required by this section to any government agency requesting it.

(d) Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond before the cancellation of a bond is effective.

(e) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the bond required by this chapter.

Acts 1981, 67th Leg., p. 1050, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.013 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.034. CANCELLATION OF LETTER OF CREDIT. (a) A warehouse operator may not cancel a letter of credit approved by the department in lieu of a bond unless the department gives written approval of a substitute bond or letter of credit.

(b) The issuer of the letter of credit may cancel a letter of credit by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of a letter of credit may not take effect before the 91st day after the date the issuer mails notice of intent to cancel. On receipt of notice of cancellation of a letter of credit, the department shall promptly notify the warehouse operator involved. Liability under the letter of credit ceases to accrue on the effective date of cancellation. Notwithstanding cancellation under this subsection or other law to the contrary, the department or a depositor may collect under the letter of credit for any claim that arose during the period during which the letter of credit was in effect, provided that the claim is filed within the applicable limitations period established under Section 14.065.

(c) The issuer of a letter of credit shall send a copy of the notice required by this section to any government agency requesting the copy. Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond or letter of credit before the cancellation of a letter of credit is effective.

(d) The suspension of a license under this section continues as

long as the warehouse operator fails to maintain the bond or letter of credit required by this chapter.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.035. CANCELLATION OF CERTIFICATE OF DEPOSIT OR CASH. (a) A warehouse operator may not repossess a certificate of deposit or cash approved by and deposited with the department in lieu of a bond unless:

(1) the department gives written approval of a substitute bond or letter of credit; and

(2) at least two years have passed after the expiration of the last licensing period during which the certificate of deposit or cash was deposited with the department in lieu of a bond.

(b) Notwithstanding any other provision of this chapter, the department may not release a certificate of deposit or cash deposited with the department while a claim filed within the applicable limitations period established under Section 14.065 is pending before the department or a court.

(c) A warehouse operator may, on written request to the department, recover cash or a certificate of deposit from the department before the expiration of the two-year period specified in Subsection (a)(2) if:

(1) the department performs a closeout inspection;

(2) the department determines on the best available evidence that no outstanding obligations exist at the time of the closeout inspection;

(3) the warehouse operator submits with the written request a bond:

(A) in an amount equal to six cents per bushel for 50 percent of the total storage capacity of the facility or combination covered by the cash or certificate of deposit the warehouse operator is attempting to recover; and

(B) covering any failure of obligation that may have occurred during all licensing periods covered by the cash or certificate of deposit the warehouse operator is attempting to recover; and

(4) at least 30 days have passed since the closeout

inspection.

(d) A claim against the bond required by Subsection (c) must be filed with the department or in a court of competent jurisdiction not later than the second anniversary of the date of the closeout inspection.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. INSURANCE

Sec. 14.041. CASUALTY INSURANCE. (a) Except as provided by Subsections (c) and (d), an applicant for a license must file or have on file with the department a certificate of insurance evidencing that:

(1) the applicant has an effective policy of insurance issued by an insurance company authorized to do business in this state or, with the approval of the department, by an eligible surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter; and

(2) the policy insures, in the name of the applicant, all depositor grain that is or may be in the public grain warehouse for its full market value against loss by or due to water or other fluid resulting from an insured peril, excluding flood and other rising waters resulting from natural causes, malicious mischief, vandalism, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado.

(b) If water or other fluid resulting from an insured peril, excluding flood and other rising waters resulting from natural causes, malicious mischief, vandalism, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado destroys or damages grain in a public grain warehouse, the warehouse operator shall, on demand by the depositor and presentation of a receipt or other evidence of ownership, make settlement with the depositor of the grain. The amount of the settlement shall be the average price paid for grain of the same grade and quality on the date of the loss at the location of the warehouse, minus the warehouse operator's charges and advances. If a settlement is not made before the 31st day following the date of demand, the depositor is entitled to seek recovery from the insurance company.

(c) An applicant is not required to file a certificate of insurance if the applicant certifies in writing, at or before the time the certificate of insurance is due, that all grain within the warehouse at the time the license is to be effective is or will be owned by the applicant free of any lien. The applicant shall file the required certificate of insurance on or before the first day any grain not owned by the applicant free of any lien is stored for hire, handled for hire, or shipped for hire.

(d) An applicant for a license shall insure depositor grain for its full market value against loss by or due to fire or windstorm if the grain is in temporary or emergency storage. The certificate required under Subsection (a) must evidence that the applicant has an effective policy of insurance under this subsection before the applicant may store depositor grain in temporary or emergency storage.

Renumbered from Sec. 14.011 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 196, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.505, eff. Sept. 1, 2003.

Sec. 14.042. INSURANCE CANCELLATION. (a) A warehouse operator may not cancel an insurance policy approved by the department unless the department gives written approval of a substitute policy.

(b) The insurer may cancel an insurance policy by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of an insurance policy is not effective before the 31st day following the date the insurer mails notice of intent to cancel. On receipt of notice of cancellation of an insurance policy, the department shall promptly notify the warehouse operator involved.

(c) The insurer shall send a copy of the notice required by this section to any government agency requesting the copy.

(d) Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new certificate of insurance before the cancellation of an insurance policy is effective or fails to provide a certification of ownership under Section 14.041(c).

(e) The suspension of a license under this section continues as

long as the warehouse operator fails to maintain the insurance required by this chapter.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.043. ADDITIONAL INSURANCE. (a) If the department determines that an approved insurance policy is insufficient, the department shall require the warehouse operator to obtain additional insurance.

(b) If a license has been suspended or revoked or has expired, the department may require continued insurance coverage by the warehouse operator to protect depositors of grain for as long as any receipts or open storage accounts remain outstanding.

(c) The warehouse operator shall obtain the additional insurance required by this section and provide verification of the additional insurance within a time specified by the department, and the additional insurance shall be maintained or continued as necessary to meet the requirements of this chapter.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. WAREHOUSE OPERATOR OBLIGATIONS

Sec. 14.051. POSTING OF LICENSE. Each warehouse operator shall immediately on receipt of a license post the original in a conspicuous place at the primary recordkeeping location for the individually licensed facility or combination. A copy of the license must be conspicuously posted at each facility where grain is stored for hire, handled for hire, or shipped for hire.

Renumbered from Sec. 14.008 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.052. WAREHOUSE OPERATOR OBLIGATIONS. (a) The obligations of a warehouse operator include the obligation to:

(1) deliver grain to a person holding a receipt for grain stored in the warehouse; and

(2) maintain the quantity and quality of all grain not owned by the warehouse operator, including open storage grain.

(b) Except as otherwise provided by this chapter or by department rule, the obligation of a warehouse operator to deliver grain to a person holding a receipt for grain stored in the public grain warehouse is controlled by Section 7.403, Business & Commerce Code.

(c) If a warehouse operator accepts for storage, shipping, handling, purchase, or sale any grain that is nonfungible or for which identity must be preserved, the warehouse operator shall safeguard the grain from intermingling with grain that would impair or destroy the identity-preserved or nonfungible nature of the grain. Nothing in this section requires the warehouse operator to accept grain that is nonfungible or that requires identity preservation.

(d) The warehouse operator remains liable for the quality and quantity of grain deposited at the warehouse and for any other obligations established under this chapter for any period during which the warehouse has been sealed or during any period of probation, suspension, or revocation imposed under this chapter or for grain abandoned by the warehouse operator unless:

(1) the warehouse operator makes a written request to the department for access to the warehouse;

(2) the request adequately describes why access is necessary to meet the warehouse operator's obligations under this chapter;

(3) the request adequately describes what type of access is necessary to meet the warehouse operator's obligations under this chapter;

(4) the request for access is reasonable;

(5) allowing access would not impair the department's ability to preserve evidence, warehouse operator records, or depositor grain assets; and

(6) the request is denied by the department or the department imposes unreasonable restrictions that prevent the operator from meeting the obligations described in the request.

(e) The department is entitled, on behalf of depositors, to recover from the warehouse operator's bond the cost of damages suffered by depositors as a result of sealing the warehouse or as a result of the warehouse operator abandoning the warehouse and the grain contained in the warehouse.

Acts 1981, 67th Leg., p. 1052, ch. 388, Sec. 1, eff. Sept. 1, 1981;

Acts 1993, 73rd Leg., ch. 553, Sec. 2, eff. Sept. 1, 1993.
Renumbered from Sec. 14.0091, 14.021 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.053. RECEIPT FORMS. (a) A warehouse operator shall use one set of serially numbered and sequentially issued receipts for all warehouses operated under a single license. In addition to a unique serial number, each receipt form must contain all of the information prescribed by department rule. If further provided by department rule, the warehouse operator shall request the receipt forms from the printer on a form approved, prescribed, or furnished by the department.

(b) The warehouse operator shall provide the department with an exemplar of the receipt forms and an affidavit from the printer showing the number of receipts printed and their serial numbers before issuing any receipt from the printed set. The exemplar and affidavit required by this subsection shall be provided each time a new set of receipts is printed.

(c) The warehouse operator may use an electronic receipt system if the provider of the electronic receipt system has been approved by the department or by the United States Department of Agriculture or any other federal agency that issues a license for the operation of a public grain warehouse.

(d) The department may require a warehouse operator to provide a bond to cover any loss resulting from unlawful use of a receipt. The department shall determine the form and the amount of the bond, but the amount may not exceed $5,000.

Renumbered from Sec. 14.020 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.054. ISSUANCE OF SCALE WEIGHT TICKET OR RECEIPT. (a) On receiving grain, a warehouse operator shall issue to the person delivering the grain a serially numbered scale weight ticket in a form approved by the department.

(b) On application of a depositor, the warehouse operator shall issue to the depositor a Texas grain warehouse receipt, which must be:

(1) in a form prescribed by the department; and

(2) in conformity with Chapter 7, Business & Commerce Code.

(c) A Texas grain warehouse receipt issued under this subchapter is subject to the provisions of Chapter 7, Business & Commerce Code.

(d) A Texas grain warehouse receipt is a negotiable document of title. A scale weight ticket is not a negotiable document of title.

(e) Except as provided by Section 14.055 for duplicate receipts, a warehouse operator may not issue two scale weight tickets or two receipts bearing the same number during any calendar year.

(f) Unless previously canceled in accordance with the provisions of Chapter 7, Business & Commerce Code, a Texas grain warehouse receipt issued under this chapter expires 10 years after the date of issuance.

Renumbered from Sec. 14.017 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.055. DUPLICATE RECEIPTS. (a) Except as otherwise provided by this section, if a receipt issued under this chapter is outstanding, another receipt covering all or part of the grain covered by the initial receipt may not be issued by the warehouse operator or any other person. If a receipt is lost, stolen, or destroyed, the owner is entitled to a new receipt as a duplicate or substitute for the missing receipt. The duplicate or substitute receipt has the same legal effect as the original receipt and must:

(1) state that it is in lieu of the original receipt; and

(2) bear the number and date of the original receipt.

(b) Before issuing a duplicate receipt, the warehouse operator shall require from the owner an indemnity bond of double the market value of the grain covered by the missing receipt. The bond must be in a form and with a surety prescribed by the department to fully protect all rights under the missing receipt.

(c) A warehouse operator may not obtain, purchase, or become a surety on a bond for a lost, stolen, or destroyed receipt.

(d) A court may not order delivery of grain covered by a lost, stolen, or destroyed receipt without requiring the bond provided by this section.

Renumbered from Sec. 14.019 and amended by Acts 2001, 77th Leg., ch.

1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.056. RECEIPT FOR GRAIN OWNED BY WAREHOUSE OPERATOR. A warehouse operator may issue a receipt for grain that is owned by the warehouse operator, in whole or part, and located in the warehouse operator's warehouse. The negotiation, transfer, sale, or pledge of that receipt may not be defeated because of its ownership.

Renumbered from Sec. 14.018 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.057. RECORDS. (a) Every warehouse operator shall keep in a safe place complete and correct records and accounts pertaining to the public grain warehouse, including records and accounts of:

(1) grain received and withdrawn from the warehouse;

(2) unissued receipts in the warehouse operator's possession;

(3) receipts and scale weight tickets issued by the warehouse operator; and

(4) receipts returned to and canceled by the warehouse operator.

(b) The warehouse operator shall retain the records required by this section for the period of time prescribed by the department. The warehouse operator shall retain copies of receipts or other documents evidencing ownership of grain or liability of a warehouse operator as long as the documents are outstanding. If the documents are canceled, the warehouse operator shall retain the documents or receipts for a period of not less than two years from the date of cancellation.

(c) The warehouse operator shall:

(1) clearly mark all canceled receipts "canceled" and mark on the face of each receipt the date of the cancellation;

(2) keep records and accounts required by this section separate from the records and accounts of other businesses;

(3) issue in numerical order all scale weight tickets and receipts; and

(4) keep in numerical order copies of the scale weight tickets and receipts issued by the warehouse operator.

(d) In records kept under this section, grain may be designated as company-owned grain only if:

(1) the grain has been paid for and is wholly owned by the warehouse operator; or

(2) the ownership of the grain has been transferred to the warehouse operator under a written contract of purchase.

(e) The warehouse operator shall report to the department on forms furnished by the department the following information on scale weight tickets used in the warehouse operator's business:

(1) the number of scale weight tickets printed;

(2) the serial numbers of the scale weight tickets printed; and

(3) the printer of the scale weight tickets.

(f) The warehouse operator shall make any records required by this section or department rule accessible and available for inspection by the department at any reasonable time.

Renumbered from Sec. 14.022 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.058. POSTING OF STORAGE RATES OR TARIFFS. (a) A public grain warehouse licensed under this chapter shall post a copy of all storage rates and tariffs charged by the warehouse operator at the main warehouse office and at each warehouse facility operating under the license.

(b) The warehouse operator shall post any change to the posted storage rates or tariffs not later than the third day before the day on which the change is to take effect.

(c) Department inspectors shall check compliance with this section during inspections of a public grain warehouse under this chapter.

Renumbered from Sec. 14.036 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.059. INSPECTIONS; FEE. (a) On request by the department, a warehouse operator shall report to the department on the condition, operation, and business of each public grain warehouse that the warehouse operator operates and all grain stored in those

warehouses.

(b) The department shall inspect each public grain warehouse at least once annually and may make additional inspections as the department considers necessary. A warehouse operator may request that the department make additional inspections.

(c) The department shall collect from the warehouse operator whose public grain warehouse is inspected an inspection fee for an annual inspection or an inspection requested by the warehouse operator, but may not collect an inspection fee for other inspections unless the inspection is conducted:

(1) under the terms of an agreed or ordered suspension or probation;

(2) in response to a complaint that the warehouse operator has not complied with the duties and obligations provided for by this chapter and the complaint is determined by the department to be valid;

(3) as a follow-up inspection to:

(A) determine whether a shortage of grain discovered by the department has been corrected;

(B) obtain records not immediately available at the location designated as the recordkeeping location in department records or to which access was refused during a previous inspection;

(C) ensure that recordkeeping discrepancies discovered during a previous inspection have been corrected; or

(D) monitor a suspension or probation under this chapter; or

(4) to monitor termination of arrangements for storing, shipping, or handling of grain under this chapter.

(d) The department by rule shall set the inspection fee.

Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.12, eff. Sept. 1, 1995. Renumbered from Sec. 14.014 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. REMEDIES AND CLAIMS

Sec. 14.061. WAREHOUSE RECEIPT AS PRIMA FACIE EVIDENCE. In an action involving a warehouse operator that is brought under this chapter, a warehouse receipt constitutes prima facie evidence of the truth of the facts stated in the receipt.

Renumbered from Sec. 14.0261 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.062. INVALID RECEIPTS. Notwithstanding any other provision of this code or the Business & Commerce Code, a receipt for grain is void as to any person who receives the receipt with knowledge that the grain purported to be covered by the receipt was not, at the time the receipt was issued, actually stored in the warehouse of the warehouse operator issuing the receipt.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.063. TERMINATION OF STORAGE. (a) A warehouse operator desiring to terminate the storage of grain in the warehouse operator's warehouse, including grain that is abandoned or is unclaimed prior to the sale of a warehouse, shall do so in accordance with Sections 7.206 and 7.210, Business & Commerce Code, except that the warehouse operator is not required to hold the balance of the proceeds of a sale, but may transfer the balance to the comptroller, who shall treat the money in the same manner as an escheated bank account.

(b) A purchaser in good faith of grain sold under Section 7.210, Business & Commerce Code, takes the grain free of any rights of the holder of the receipt, but the receipt is evidence of entitlement to the escheated funds deposited with the comptroller under Subsection (a).

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 2.01, eff. Sept. 1, 1997. Renumbered from Sec. 14.023 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.064. CERTAIN LOADOUT FEES PROHIBITED. (a) A warehouse operator may not charge a fee for loading out grain if the loadout was the result of the misconduct of the warehouse operator.

(b) Misconduct under this section includes:

(1) violation of this chapter as established by final, unappealable order of the commissioner;

(2) conviction of a crime, including a plea of nolo

contendere, described as an offense under this chapter; and

(3) conviction of a crime, including a plea of nolo contendere, described as an offense under the Penal Code and involving any type of fraud or theft related to the storing, shipping, handling, sale, or purchase of grain or the sale or purchase of grain handling, shipping, or storage equipment or warehouse structures or other assets.

(c) A loadout fee collected during a period of suspension of a warehouse operator's license by the department, after revocation of a warehouse operator's license, or during a period in which criminal charges are pending against a warehouse operator, shall be placed in an escrow account by the warehouse operator until:

(1) the department's suspension is lifted;

(2) the prosecutor ceases to pursue criminal charges;

(3) the indictment or information is dismissed by a court; or

(4) the warehouse operator is acquitted.

(d) If misconduct is finally determined to have occurred as provided by Subsection (b), the loadout fees placed in escrow shall be returned to the person originally paying those fees. The loadout fees placed in escrow shall be returned to the warehouse operator if the warehouse operator is found not to have committed misconduct by acquittal, by the dismissal of the criminal charges, or by final order of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.065. RECOVERY ON BOND; LIABILITY OF WAREHOUSE OPERATOR. (a) If no action on the bond or cash, certificate of deposit, or letter of credit deposited in lieu of a bond of a warehouse operator is begun before the 31st day after the date of a written demand to the department, a depositor has a right of action on the bond or cash, certificate of deposit, or letter of credit deposited in lieu of a bond for recovery of damages suffered by the depositor as a result of the failure of the warehouse operator to comply with any condition of the bond, or if cash, a certificate of deposit, or a letter of credit is deposited in lieu of a bond, failure to comply with any obligation of the warehouse operator under this chapter that would have been covered by a bond.

(b) Recovery on a bond shall be prorated if claims exceed liability on a bond, but a depositor suing on a bond is not required to join other depositors in a suit. The burden of establishing proration is on the surety as a matter of defense or is on the department as intervenor on behalf of other depositors.

(c) A warehouse operator is liable for damages for loss of or injury to grain caused by the warehouse operator's failure to exercise the care that a reasonably prudent person would exercise in regard to the grain under similar circumstances, but, unless otherwise agreed, a warehouse operator is not liable for damages to grain that could not have been avoided through the exercise of that care.

(d) A person who files an action on a bond under this section must serve notice of the suit on the department in the same manner and within the same period as for the defendant or surety who issued the bond.

(e) On authentication by the department, the court shall accept into evidence as a public record any report prepared by the department under this chapter that describes potential bond claims by other depositors, regardless of whether any of those depositors are joined in the suit.

(f) A person is prohibited from filing a claim on an invalid receipt.

(g) An action under this section must be brought not later than the second anniversary of the date of expiration of the public grain warehouse license in effect at the time the claim arose.

(h) The department by rule may set a limitations period for filing claims with the department on a bond filed with the department or cash, a certificate of deposit, or a letter of credit deposited with the department in lieu of a bond.

Renumbered from Sec. 14.010 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.066. APPEAL OF DEPARTMENT ACTION BY WAREHOUSE OPERATOR. (a) A department action or order affecting a warehouse operator under this chapter is appealable in accordance with this section unless the action involves agency rulemaking, the assessment of an administrative penalty, imposition of a license sanction, or any

other action for which a specific administrative or judicial remedy is available under this chapter, Chapter 12 of this code, or Chapter 2001, Government Code.

(b) Not later than the 10th day after the date the department takes an action or issues an order described by Subsection (a), the warehouse operator may serve notice on the department to appear in a district court of Travis County or the district court of the county in which the public grain warehouse is located. The court shall fix the time of the hearing not less than 3 days or more than 20 days after the date of service of the notice.

(c) The burden is on the warehouse operator to show by a preponderance of the evidence that the action taken or order issued by the department was not authorized under this chapter or, if authorized, was an abuse of the department's discretion.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 3, eff. September 1, 2011.

SUBCHAPTER H. OFFENSES

Sec. 14.071. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter for which an offense is not expressly provided.

(b) An offense under this section is a Class B misdemeanor.

Renumbered from Sec. 14.027 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.072. PENALTY FOR OPERATING WITHOUT A LICENSE. (a) A person commits an offense if the person:

(1) transacts any public grain warehouse business without first obtaining a license required by this chapter; or

(2) continues to transact public grain warehouse business after a license has been revoked or suspended, or the license holder has been placed on probation, except as permitted under Section 14.084.

(b) An offense under this section is a felony of the third degree.

(c) A person commits a separate offense for each day business prohibited by this section is carried on.

Renumbered from Sec. 14.028 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.073. PENALTY FOR FRAUD. (a) A person commits an offense if the person:

(1) issues or aids in issuing a receipt or scale weight ticket knowing that the grain covered by the receipt or scale weight ticket has not been actually received at the grain warehouse;

(2) issues or aids in issuing a duplicate or additional negotiable receipt for grain knowing that a former negotiable receipt for the same grain or any part of the grain is outstanding except as permitted by Section 14.055; or

(3) fraudulently and without proper authority represents, forges, alters, counterfeits, or simulates any license, scale weight ticket, or receipt provided for by this chapter.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.029 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.074. PENALTY FOR UNLAWFUL DELIVERY. (a) A person commits an offense if the person:

(1) delivers grain out of a public grain warehouse knowing that a negotiable receipt for the grain is outstanding and without possessing that receipt; or

(2) delivers grain out of a public grain warehouse:

(A) knowing that a nonnegotiable receipt or scale weight ticket is outstanding;

(B) without the prior approval of the person lawfully entitled to delivery; and

(C) without the delivery being shown on the appropriate records of the warehouse operator.

(b) It is an affirmative defense to prosecution under this section that the person's action is:

(1) a sale or other disposition of grain in lawful

enforcement of a warehouse operator's lien;

(2) a warehouse operator's lawful termination of a storing, shipping, or handling agreement;

(3) a delivery to the person lawfully entitled to delivery;

(4) a delivery authorized by prior approval of the person lawfully entitled to delivery and the delivery is shown on the appropriate records of the warehouse operator;

(5) necessary to prevent destruction of the grain;

(6) taken under the order of a state or federal court; or

(7) permitted by a rule of the department necessary to carry out this chapter.

(c) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.030 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.075. PENALTY FOR FRAUDULENTLY ISSUING A SCALE WEIGHT TICKET OR RECEIPT. (a) A person commits an offense if the person fraudulently issues or aids in fraudulently issuing a receipt or scale weight ticket knowing that it contains a false statement.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.031 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.076. PENALTY FOR CHANGING A RECEIPT OR SCALE WEIGHT TICKET AFTER ISSUANCE. (a) A person commits an offense if the person changes a receipt or scale weight ticket after its issuance.

(b) It is a defense to prosecution under this section that the change on the receipt or scale weight ticket is a notation by the warehouse operator for partial delivery or corrections made by the warehouse operator to reflect accuracy of accounts.

(c) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.032 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.077. PENALTY FOR DEPOSITING GRAIN WITHOUT TITLE. (a) A person commits an offense if the person:

(1) deposits grain without having title to the grain or deposits grain on which there is a lien or mortgage;

(2) receives for the grain a negotiable receipt; and

(3) negotiates the receipt for value with intent to deceive and without disclosing the person's lack of title or the existence of a lien or mortgage on the grain.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.033 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.078. PENALTY FOR STEALING GRAIN OR RECEIVING STOLEN GRAIN. (a) A person commits an offense if the person:

(1) obtains or exercises control over grain stored in a public grain warehouse without the owner's effective consent and with the intent to deprive the owner of the grain;

(2) obtains from another person grain stolen from a public grain warehouse knowing that the grain is stolen; or

(3) exercises control over grain stolen from a public grain warehouse knowing that the grain is stolen.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.034 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.079. PENALTY FOR INTERFERING WITH SEALED WAREHOUSE OR DEPARTMENT INSPECTION OR INVESTIGATION. (a) A person commits an offense if the person:

(1) without the department's consent and with the intent to obstruct the department's regulation, management, or control of sealed grain, obtains or exercises control over grain stored in a building, bin, or other similar structure sealed by the department;

(2) breaks, removes, vandalizes, or otherwise interferes

with a department seal placed on a building, bin, or other similar structure used for the receiving of grain for hire, shipping of grain for hire, storing of grain for hire, or handling of grain for hire;

(3) without the department's consent and with the intent to obstruct the department's regulation, management, or control of sealed grain, interferes with the department's access to or control of grain stored in a building, bin, or other similar structure sealed by the department; or

(4) interferes with the lawful investigation or inspection of the facilities, records, or grain deposits of a public grain warehouse by a department inspector or other department official.

(b) It is an affirmative defense to prosecution under this section that the person's action is:

(1) necessary to prevent destruction of stored grain or the sealed structure; or

(2) taken under the order of a state or federal court.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER I. ENFORCEMENT

Sec. 14.081. OFFENSE IS VIOLATION; STANDARD OF PROOF. (a) Commission of an offense under this chapter is also a violation for purposes of administrative enforcement by the department.

(b) Proof of a violation under this chapter for purposes of administrative enforcement, by assessment of an administrative penalty or license sanction, is by a preponderance of the evidence.

(c) In an administrative enforcement action against a person for the commission of an offense under this chapter, the department is required to prove any intent element provided by the description of the offense.

(d) Both an administrative enforcement action and a criminal prosecution may be maintained against a person who violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.082. DISCOVERY OF SHORTAGE; REFUSAL OF INSPECTION.

(a) If the department determines that a warehouse operator does not possess sufficient grain to cover outstanding receipts and outstanding scale weight tickets issued or assumed by the warehouse operator, or if a warehouse operator refuses or is unable to submit records or property for lawful inspection or the department is unable to conduct an inspection of the warehouse due to the condition of the warehouse or grain stored in the warehouse, the department may seal the warehouse to prevent delivery or receipt of grain except as authorized by the department, suspend the license of the warehouse operator, and give notice to the warehouse operator requiring the warehouse operator to submit records or property for lawful inspection, to correct any condition interfering with the department's inspection of the warehouse or grain, or to cover a shortage of a particular type of grain by:

(1) storing to the credit of or delivering to each depositor affected by the shortage grain of the same type and quality that is stored at any of the warehouse operator's licensed warehouses in this state and that has been designated as company-owned grain by the warehouse operator;

(2) purchasing and storing to the credit of or delivering to each depositor affected by the shortage grain of the same type and quality;

(3) selling company-owned grain of a different type and paying to each depositor affected by the shortage, on a pro rata basis, the market value of the depositor's grain as determined on the day the shortage was discovered by the department; or

(4) using any combination of the remedies described by Subdivisions (1)-(3) or another fair and reasonable method for meeting the shortage approved by the department.

(b) A warehouse operator shall comply with the requirements of a notice issued under Subsection (a) within 24 hours of notification by the department or within a longer time allowed by the department. If the warehouse operator fails to comply, the department may petition the district court for the county where the warehouse operator's principal place of business is located, as shown by the license application, for a court order authorizing the department to take possession of:

(1) all or a portion of the grain located in the public grain warehouse or warehouses; and

(2) all relevant records and property of the warehouse

operator.

(c) If the department takes possession of grain under Subsection (b), the department shall give written notice of its action to the surety on the bond of the warehouse operator and may notify the holders of all receipts and scale weight tickets issued for grain, as shown by the warehouse operator's records, to present their receipts or scale weight tickets for inspection or account for the absence of the receipts or scale weight tickets. The department may then audit and investigate the affairs of the public grain warehouse, especially with respect to the grain of which there is an apparent shortage. The purpose of the audit and investigation is to determine the amount of the shortage and, if practicable, to compute the shortage as to each depositor, as shown by the warehouse operator's records. The department shall notify the warehouse operator and the surety on the warehouse operator's bond of the approximate amount of the shortage. The department shall notify each depositor affected by the shortage by sending notice to the depositor's last known address, as shown by the warehouse operator's records.

(d) The department shall retain possession of grain obtained under this section until:

(1) the warehouse operator or surety on the bond satisfies the claims of all depositors, within the limitations on liability imposed by this chapter; or

(2) the court orders the department to surrender possession.

(e) If, during or after an audit or investigation authorized by this section or at any other time, the department has evidence that the warehouse operator is insolvent or unable to satisfy the claims of all depositors, the department may petition the district court for appointment of a receiver to operate or liquidate the business of the warehouse operator in accordance with law.

(f) A license suspension issued under this section remains in effect until lifted by the department through written notice to the warehouse operator or as provided by Section 14.066.

Renumbered from Sec. 14.024 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 4, eff.

September 1, 2011.

Sec. 14.083. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE OR PROBATION. (a) The department may deny an application for a license or license renewal if the applicant fails to comply with a requirement of this chapter, a rule adopted by the department under this chapter, or a lawful order of the commissioner or the commissioner's designee.

(b) The department may revoke, modify, or suspend a license or assess an administrative penalty against, place on probation, or reprimand a license holder for a violation of this chapter, a rule adopted by the department under this chapter, or a lawful order of the commissioner or the commissioner's designee.

(c) In addition to or in lieu of a license suspension authorized by another provision of this chapter, if the department considers it necessary, the department may suspend a license and prohibit the movement of grain into or out of a warehouse for up to 30 days without a hearing. For good cause, a suspension under this subsection may be extended for additional periods of up to 30 days each, not to exceed a total of 90 days of suspension in a licensing period.

(d) During a period of license suspension or probation, the department may seal and restrict access to the warehouse operator's buildings, bins, or other similar structures used to receive, store, ship, or handle grain, for hire, and require the warehouse operator to:

(1) maintain additional information in the records of the warehouse or report regularly to the department on matters that are the basis of the suspension or probation;

(2) limit practice to the areas prescribed by the department;

(3) operate under conditions or by methods prescribed by the department; or

(4) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the suspension or probation.

(e) Except as provided by Subsection (c), if the department proposes to deny, revoke, modify, or suspend a person's application or license or place a warehouse operator on probation, the person is

entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

(f) A license suspension under Subsection (c) remains in effect until lifted by the department through written notice to the warehouse operator or as provided by Section 14.066 or until it expires by operation of law in accordance with the department's notice of suspension or the limitations provided by Subsection (c).

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 1.10, 3.07, eff. Sept. 1, 1995. Renumbered from Sec. 14.015 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 5, eff. September 1, 2011.

Sec. 14.084. OPERATION AFTER REVOCATION OR SUSPENSION OF A LICENSE OR PROBATION. (a) If a license is revoked, the warehouse operator shall terminate, in a manner prescribed by the department, all arrangements concerning storing, shipping, handling, and purchasing or selling of grain.

(b) During a period of suspension of a license or probation, the warehouse operator:

(1) shall operate the warehouse in a manner prescribed by the department;

(2) may deliver grain previously received, subject to the department's written conditions of suspension, if any; and

(3) may not receive grain for storing, shipping, or handling without the department's written authorization.

Renumbered from Sec. 14.016 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.085. INJUNCTION. (a) If, after notice, a warehouse operator refuses to comply with this chapter, the department may apply for an injunction in a district court in Travis County or in a district or county court in the county where the warehouse is located.

(b) The courts of this state are vested with jurisdiction to issue a temporary or permanent injunction against:

(1) operation of a public grain warehouse or issuance of receipts or scale weight tickets either without a license or during a period of suspension of a warehouse operator's license or during a period when the warehouse operator is under probation;

(2) interference by any person with the carrying out by the department, or by a receiver appointed under this chapter, of duties and powers granted by this chapter; or

(3) any other violation of this chapter for which injunctive relief is an appropriate remedy.

(c) The notice provided for in Subsection (a) shall be delivered to the warehouse operator not less than 10 business days before the date the department applies for an injunction under Subsection (b)(1).

(d) The notice provided for in Subsection (a) shall be delivered to the warehouse operator not less than two business days before the date the department applies for an injunction under Subsection (b)(2) or (3).

Renumbered from Sec. 14.025 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.086. CIVIL PENALTY. (a) A person who violates this chapter is liable for a civil penalty of not less than $500 or more than $10,000 for each violation. Each day a violation occurs or continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or the district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty. The attorney general, a county attorney, or a district attorney may file suit under this section without a request from the department.

(c) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a penalty provided by this section.

(d) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue

fund. All civil penalties recovered in suits initially instituted by a local government or governments under this section shall be divided equally between the state and the local government or governments, with 50 percent of the recovery to be paid to the general revenue fund and the other 50 percent to be paid equally to the local government or governments initially instituting the suit.

(e) A civil penalty may not be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was successful in obtaining a judgment for the administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.087. RECOVERY OF COURT COSTS. (a) On prevailing in an action commenced by the department through the attorney general under this chapter, the department and the attorney general are each entitled to recover:

(1) investigation costs and fees;

(2) reasonable attorney's fees;

(3) court costs; and

(4) other costs relating to the action, including the cost of depositions and other forms of discovery and copying charges.

(b) The costs recoverable under this section are in addition to other relief available to the department or attorney general.

Renumbered from Sec. 14.0262 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 6, eff. September 1, 2011.

Sec. 14.088. VENUE. (a) Venue for a criminal prosecution under this chapter is in the county in which the alleged offense occurred.

(b) Except for an action for injunctive relief, venue for a civil action under this chapter commenced by the attorney general or a county or district attorney, either independently or on behalf of the department, is in any county in which all or part of the cause of the action accrued.

(c) Venue for an action for injunctive relief under this chapter is in a district court in Travis County or in a district or county court in the county where the warehouse is located.

(d) Venue for an administrative action commenced under this chapter is governed by Chapter 2001, Government Code, or, to the extent not inconsistent with Chapter 2001, the rules of the State Office of Administrative Hearings or the department.

Renumbered from Sec. 14.035 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 14A. OTHER PUBLIC WAREHOUSE OPERATORS

Sec. 14A.001. DEFINITIONS. In this chapter:

(1) "Public warehouse operator" means a person who stores cotton, wheat, rye, oats, or rice, or any kind of produce.

(2) "Warehouse" means a house, building, or room in which the commodities listed in Subdivision (1) are stored and protected from damage by the elements.

Amended by Acts 1997, 75th Leg., ch. 211, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 14.201 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.002. CERTIFICATE TO TRANSACT BUSINESS. No person may operate a warehouse without first obtaining a certificate to transact business as a public warehouse operator from the county clerk of the county in which the warehouse is located.

Renumbered from Sec. 14.204 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.003. APPLICATION FOR CERTIFICATE. (a) In order to obtain a certificate to transact business, a person must apply in writing to the county clerk of the county in which the warehouse is to be operated. The application must state the name and location of the warehouse and:

(1) the name of each person with an interest as owner or principal in the warehouse; or

(2) if a corporation owns or manages the warehouse, the name of the president, secretary, and treasurer of the corporation.

(b) The clerk shall issue the certificate and retain for county records a copy of the application.

Renumbered from Sec. 14.205 by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.004. BOND. (a) A person receiving a certificate to transact business shall file a bond with the county clerk granting the certificate.

(b) The bond must be:

(1) payable to the State of Texas;

(2) of good and sufficient surety;

(3) conditioned on faithful performance of the applicant's duty as a public warehouse operator; and

(4) in the amount of $5,000.

(c) A bond is subject to approval by the county clerk and the clerk shall file approved bonds in the clerk's office.

Renumbered from Sec. 14.206 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.005. RECEIPTS. (a) The owner or depositor of property stored in a warehouse may request from the public warehouse operator a receipt for the property stored in the warehouse.

(b) The receipt shall be signed by the public warehouse operator or the warehouse operator's agent and shall state:

(1) that the receipt is issued by a warehouse;

(2) the date of its issuance;

(3) the name and location of the warehouse in which the property is stored; and

(4) the description, quantity, number, and marks of the property stored.

(c) The public warehouse operator shall number receipts consecutively in the order of their issue and shall keep a correct record of receipts issued available for public inspection at reasonable hours.

Renumbered from Sec. 14.207 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.006. RECEIPT FOR COTTON. (a) A public warehouse operator shall issue a warehouse receipt to any person who deposits cotton in the warehouse operator's warehouse and requests a receipt.

(b) The receipt shall contain:

(1) all information required to be included on a receipt by Section 14A.005;

(2) the date on which the cotton was received in the warehouse;

(3) a statement that the cotton represented by the receipt is deliverable on return of the receipt properly endorsed and payment of charges for storage and insurance stated on the face of the receipt; and

(4) a statement of the grade and staple of the cotton represented by the receipt.

(c) The statement of grade and staple of cotton required on receipts by this section shall be determined by a licensed public cotton classer. The public warehouse operator may not charge the depositor of the cotton more than 25 cents per bale for the statement. If no licensed public cotton classer is available, the warehouse operator may issue a temporary receipt that:

(1) does not contain a statement of grade and staple of the cotton;

(2) has the words "temporary receipt" clearly stamped on its face; and

(3) is exchangeable at any time after five days from the date of its issuance for a permanent warehouse receipt containing all information required by Subsection (b).

(d) Failure or neglect by a public warehouse operator to comply with the provisions of this section is a ground for revocation of a certificate to transact business as a public warehouse operator.

Renumbered from Sec. 14.208 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.007. DUPLICATE RECEIPTS. (a) A public warehouse

operator may not issue a duplicate receipt or two receipts bearing the same number from the same warehouse during the same calendar year, except as provided by Subsection (b).

(b) If a receipt is lost or destroyed, the public warehouse operator shall issue a new receipt that:

(1) bears the same date and number as the original receipt;

(2) is plainly marked "duplicate" on its face; and

(3) is secured with a deposit:

(A) made by the person requesting the duplicate receipt; and

(B) acceptable to the warehouse operator to protect a person who may hold the original receipt in good faith and for valuable consideration.

Renumbered from Sec. 14.209 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.008. EXCHANGE OF COTTON RECEIPTS. (a) A person may exchange a nonnegotiable receipt for cotton for a negotiable receipt for cotton by:

(1) returning the nonnegotiable receipt to the warehouse issuing it; and

(2) complying with the provisions of this chapter relating to negotiable receipts.

(b) When the negotiable receipt is surrendered or canceled, the public warehouse operator shall mark or stamp "canceled" in ink on the face of the receipt.

Renumbered from Sec. 14.210 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.009. COTTON UNDER LIEN. A person who buys, sells, or deals with cotton on which a lien or encumbrance exists is not liable for conversion of the cotton if:

(1) the cotton is stored in a warehouse or is evidenced by a negotiable warehouse receipt issued by a public warehouse operator; and

(2) the person did not have actual knowledge of the lien or encumbrance at the time of the alleged conversion.

Renumbered from Sec. 14.211 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.010. RECEIPT TO BE ISSUED ONLY ON DELIVERY. A public warehouse operator may not issue a receipt until the goods secured by the receipt are actually delivered to the warehouse and are under the control of the warehouse operator issuing the receipt.

Renumbered from Sec. 14.212 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.011. DELIVERY. (a) A public warehouse operator shall immediately deliver property held in the warehouse on:

(1) presentation of a properly endorsed receipt issued by the warehouse operator to represent the property; and

(2) payment by the holder of the receipt of all proper warehouse charges on property represented by the receipt.

(b) Unless a receipt has been lost or canceled, a public warehouse operator may not deliver property represented by a receipt until the receipt is surrendered and canceled.

(c) On delivery of goods represented by a receipt, the public warehouse operator shall cancel the receipt by writing "canceled" in ink on the receipt and placing the warehouse operator's name on the face of the receipt. A canceled receipt is void and may not be circulated.

(d) A public warehouse operator who fails to strictly comply with this section is liable to the legal holder of the receipt for the full value of the property represented by the receipt, based on the value of the property at the time of the default.

Renumbered from Sec. 14.213 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.012. EXCEPTIONS. (a) This chapter does not apply to private warehouses or the issuance of receipts by the owners or managers of private warehouses.

(b) This chapter does not prohibit a public warehouse operator from issuing the same types of receipts as issued by a private

warehouse, provided that the faces of the receipts are plainly marked with: "not a public warehouse receipt."

Renumbered from Sec. 14.214 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14A.013. REVOCATION OF A CERTIFICATE. (a) A person may sue in the district court of the county in which a warehouse is situated to revoke the certificate of the warehouse.

(b) The person seeking revocation of the certificate shall provide the court with a written petition setting forth particular violations of the law, and the court shall conduct the trial with the same rules of process, procedure, and evidence used in civil cases.

Renumbered from Sec. 14.216 by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 15. FARMERS MARKET NUTRITION PROGRAMS

Sec. 15.001. DEFINITIONS. In this chapter:

(1) "Farmers market" means a location at which a group of two or more farmers that are certified under the department's farmers market certification program offer produce for retail sale.

(2) "Food coupon" means any redemptive coupon issued by the Department of State Health Services under this chapter that is exchangeable only for produce at a farmers market.

(3) "Produce" means fresh fruits or vegetables.

(4) "W.I.C. program" means the federal special supplemental food program for women, infants, and children administered by the Department of State Health Services.

Added by Acts 1989, 71st Leg., ch. 1191, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.001, eff. April 2, 2015.

Sec. 15.002. ESTABLISHMENT OF SPECIAL NUTRITION PROGRAM. The Department of State Health Services may establish a special nutrition program to distribute to certain participants of the W.I.C. program

food coupons that are redeemable only at farmers markets located in areas in which the program is implemented.

Added by Acts 1989, 71st Leg., ch. 1191, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.002, eff. April 2, 2015.

Sec. 15.003. ELIGIBILITY; AMOUNT OF ALLOTMENT. (a) A person is eligible to participate in the special nutrition program if the person is enrolled in the W.I.C. program and resides in an area in which the special nutrition program is implemented. The Department of State Health Services shall determine the eligibility of potential participants.

(b) Only the Department of State Health Services may determine the dollar amount of each participant's monthly allotment of food coupons.

Added by Acts 1989, 71st Leg., ch. 1191, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.003, eff. April 2, 2015.

Sec. 15.005. RULES. The executive commissioner of the Health and Human Services Commission shall adopt rules under this chapter that provide for:

(1) the design, printing, and denominations of the food coupons;

(2) the procedure for the delivery of the food coupons to participants;

(3) the procedure for the redemption of food coupons by the sellers of the produce; and

(4) other rules necessary for carrying out the purposes of this chapter.

Added by Acts 1989, 71st Leg., ch. 1191, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.004, eff. April 2, 2015.

Without reference to the amendment of this section, this section was repealed by Acts 2013, 83rd Leg., R.S., Ch. 446 (S.B. 772), Sec. 4(1), eff. June 14, 2013.

Sec. 15.006. BIENNIAL REPORT. The department shall prepare a biennial report concerning the special nutrition program and submit a copy of the report to the governor, lieutenant governor, and speaker of the house of representatives. The report must include information on the condition of the program, persons served, amount of food coupons redeemed, and funds received and expended.

Added by Acts 1989, 71st Leg., ch. 1191, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 446 (S.B. 772), Sec. 4(1), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 1, eff. September 1, 2013.

Sec. 15.007. PROGRAM FUNDS. The Department of State Health Services may accept gifts and grants from the federal government, the state, and private sources as well as legislative appropriations for the program authorized by this chapter. The use of gifts and grants other than legislative appropriations is subject, after their appropriation, only to limitations contained in the gift or grant.

Added by Acts 1989, 71st Leg., ch. 1191, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 6.005, eff. April 2, 2015.

CHAPTER 16. FUEL ETHANOL, RENEWABLE METHANE, BIODIESEL, AND RENEWABLE DIESEL PRODUCTION INCENTIVE PROGRAM

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Account" means the fuel ethanol, renewable methane, biodiesel, and renewable diesel production account.

(2) "ASTM" means the American Society for Testing and Materials.

(3) "Biodiesel" means a motor fuel that:

(A) meets the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency under Section 211 of the federal Clean Air Act (42 U.S.C. Section 7545);

(B) is mono-alkyl esters of long chain fatty acids derived from vegetable oils and animal fats;

(C) meets the requirements of ASTM specification D-6751;

(D) is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel; and

(E) is derived from agricultural products, vegetable oils, recycled greases, biomass, or animal fats or the wastes of those products or fats.

(4) "Fuel ethanol" means ethyl alcohol that:

(A) has a purity of at least 99 percent, exclusive of added denaturants;

(B) has been denatured in conformity with a method approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice;

(C) meets the requirements of ASTM D4806, the standard specification for ethanol used as a motor fuel; and

(D) is produced exclusively from agricultural products or by-products or municipal solid waste.

(4-a) "Renewable methane" means methane gas derived from animal waste or an agricultural byproduct, including creamery or fruit waste or corn silage.

(5) "Office" means the Texas Economic Development and Tourism Office.

(6) "Producer" means a person who operates a fuel ethanol, renewable methane, biodiesel, or renewable diesel plant in this state.

(7) "Renewable diesel" means a motor fuel that:

(A) meets the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency under Section 211 of the federal Clean Air Act (42 U.S.C. Section 7545);

(B) is a hydrocarbon;

(C) meets the requirements of ASTM specification D-975;

(D) is intended for use in engines that are designed to

run on conventional, petroleum-derived diesel fuel; and

(E) is derived from agricultural products, vegetable oils, recycled greases, biomass, or animal fats or the wastes of those products or fats.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 4.01, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 2, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 4, eff. June 19, 2009.

Sec. 16.002. PLANT REGISTRATION. (a) To be eligible for a grant for fuel ethanol, renewable methane, biodiesel, or renewable diesel produced in a plant, a producer must apply to the office for the registration of the plant. A producer may apply for the registration of more than one plant.

(b) An application for the registration of a plant must show to the satisfaction of the office that:

(1) the plant is capable of producing fuel ethanol, renewable methane, biodiesel, or renewable diesel;

(2) the producer has made a substantial investment of resources in this state in connection with the plant; and

(3) the plant constitutes a permanent fixture in this state.

(c) The office, after consultation with the department, shall register each plant that qualifies under this section. The office shall notify the department of plants registered under this section.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 4.01, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 3, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 5, eff. June 19, 2009.

Sec. 16.003. REPORTS. (a) On or before the fifth day of each

month, a producer shall report to the office on:

(1) the number of gallons of fuel ethanol, biodiesel, or renewable diesel or MMBtu of renewable methane produced at each registered plant operated by the producer during the preceding month;

(2) the number of gallons of fuel ethanol, biodiesel, or renewable diesel imported into this state by the producer during the preceding month;

(3) the number of gallons of fuel ethanol, biodiesel, or renewable diesel sold or blended with motor fuels by the producer during the preceding month; and

(4) the total value of agricultural products consumed in each registered plant operated by the producer during the preceding month.

(b) A producer who fails to file a report as required by this section is ineligible to receive a grant for the period for which the report is not filed.

(c) The office shall send a copy of each report to the department.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 4.01, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 4, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 6, eff. June 19, 2009.

Sec. 16.004. FUEL ETHANOL, RENEWABLE METHANE, BIODIESEL, AND RENEWABLE DIESEL PRODUCTION ACCOUNT. (a) The fuel ethanol, renewable methane, biodiesel, and renewable diesel production account is an account in the general revenue fund that may be appropriated only to the office for the purposes of this chapter, including the making of grants under this chapter.

(b) The account is composed of:

(1) fees collected under Section 16.005; and

(2) money transferred to the account under Subsection (c).

(c) The comptroller shall transfer from the undedicated portion of the general revenue fund to the account an amount of money equal to 5.25 times the amount of the fees collected under Section 16.005.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 4.01, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 5, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 6, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 7, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 8, eff. June 19, 2009.

Sec. 16.005. FEE ON FUEL ETHANOL, RENEWABLE METHANE, BIODIESEL, AND RENEWABLE DIESEL PRODUCTION.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 8

(a) The office shall impose a fee on each producer in an amount equal to 3.2 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 1.6 cents for each gallon of biodiesel produced in each registered plant operated by the producer.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 10

(a) The office shall impose a fee on each producer in an amount equal to 3.2 cents for each gallon of fuel ethanol, biodiesel, or renewable diesel produced in each registered plant operated by the producer.

(b) For each fiscal year, the office may not impose fees on a producer for more than 18 million gallons of fuel ethanol, biodiesel, or renewable diesel or MMBtu of renewable methane produced at any one registered plant.

(c) The office shall transfer the fees collected under this section to the comptroller for deposit to the credit of the account.

(d) The office may not impose fees on a producer for fuel ethanol, renewable methane, biodiesel, or renewable diesel produced at a registered plant after the 10th anniversary of the date production from the plant begins.

(e) The office may enter into an interagency contract with the

department authorizing the department to impose and collect fees on behalf of the office under this section.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 4.01, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 7, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 8, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 9, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 10, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 2.001, eff. September 1, 2011.

Sec. 16.006. FUEL ETHANOL, RENEWABLE METHANE, BIODIESEL, AND RENEWABLE DIESEL GRANTS. (a) The office, after consultation with the department, shall make grants to producers as an incentive for the development of the fuel ethanol, renewable methane, biodiesel, and renewable diesel industry and agricultural production in this state.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 10

(b) A producer is entitled to receive from the account 20 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 10 cents for each gallon of biodiesel produced in each registered plant operated by the producer until the 10th anniversary of the date production from the plant begins.

Text of subsection as amended by Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 12

(b) A producer is entitled to receive from the account 20 cents for each gallon of fuel ethanol, biodiesel, or renewable diesel produced in each registered plant operated by the producer until the 10th anniversary of the date production from the plant begins. The incentive under this subsection is payable only on that part of each gallon of fuel produced from renewable resources.

(c) For each fiscal year a producer may not receive grants for

more than 18 million gallons of fuel ethanol, biodiesel, or renewable diesel or MMBtu of renewable methane produced at any one registered plant.

(d) The office by rule shall provide for the distribution of grant funds under this chapter to producers. The office shall make grants not less often than quarterly.

(e) If the office determines that the amount of money credited to the account is not sufficient to distribute the full amount of grant funds to eligible producers as provided by this chapter for a fiscal year, the office shall proportionately reduce the amount of each grant for each gallon of fuel ethanol, biodiesel, or renewable diesel or each MMBtu of renewable methane produced as necessary to continue the incentive program during the remainder of the fiscal year.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 4.01, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 9, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1295 (H.B. 2318), Sec. 10, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 11, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1312 (H.B. 2582), Sec. 12, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 2.002, eff. September 1, 2011.

CHAPTER 17. SALE AND REGULATION OF CERTAIN FUEL MIXTURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.001. DEFINITIONS. In this chapter:

(1) "Automotive fuel rating" has the meaning assigned by 15 U.S.C. Section 2821.

(2) "Dealer" means a person who:

(A) is the operator of a service station or other retail outlet; and

(B) delivers motor fuel into the fuel tanks of motor vehicles or motor boats.

(3) "Distributor" has the meaning assigned by Section 162.001, Tax Code.

(4) "Jobber" means a person who purchases tax-paid gasoline for resale or distribution at wholesale.

(5) "Motor fuel" has the meaning assigned by Section 162.001, Tax Code.

(6) "Supplier" has the meaning assigned by Section 162.001, Tax Code.

(7) "Wholesaler" means a person who purchases tax-paid gasoline for resale or distribution at wholesale.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

SUBCHAPTER B. SALE OR DELIVERY OF MOTOR FUEL

Sec. 17.051. NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE. (a) A dealer may not sell or offer for sale motor fuel from a motor fuel pump supplied by a storage tank into which motor fuel, in a mixture in which at least one percent of the mixture measured by volume is ethanol or methanol, has been delivered within the 60-day period preceding the date of sale or offer of sale unless the dealer prominently displays on the pump from which the mixture is sold a sign that complies with Subsection (b).

(b) A sign required by Subsection (a) must:

(1) be displayed on each face of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed;

(2) state "Contains Ethanol" or "Contains Methanol," as applicable;

(3) appear in contrasting colors with block letters at least one-half inch high and one-fourth inch wide; and

(4) be displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(e) This section does not prohibit the posting of any other alcohol or additive information. Other alcohol or additive

information and any relevant posting are subject to regulation by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 8, eff. September 1, 2011.

Sec. 17.0515. NOTICE OF MOTOR FUEL TAX RATES. (a) The department shall display on each motor fuel pump from which motor fuel is sold at retail a notice of the current rates of the federal and state motor fuel taxes. The notice must:

(1) display the current rate of each tax, in cents per gallon, for each type of motor fuel;

(2) be displayed on each face of the motor fuel pump on which the price of the motor fuel sold from the pump is displayed; and

(3) be displayed in a clear, conspicuous, and prominent manner.

(b) The department shall include the notice required under Subsection (a) with any other notice displayed or required by department rule to be displayed, including a "Fuel Feedback?" sticker.

Added by Acts 2015, 84th Leg., R.S., Ch. 1016 (H.B. 991), Sec. 1, eff. January 1, 2016.

Sec. 17.052. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES. (a) Except as provided by Subsection (b), a distributor, supplier, wholesaler, or jobber of motor fuel may not deliver to an outlet in this state a motor fuel mixture that contains ethanol or methanol exceeding one percent by volume of the mixture unless, at the time of the delivery of the mixture, the person also delivers to the outlet receiving the delivery a manifest, bill of sale, bill of lading, or other document evidencing delivery of the mixture, that includes a statement containing:

(1) the percentage of ethanol or methanol contained in the mixture; and

(2) the types and percentages of any associated cosolvents contained in the mixture.

(b) Subsection (a) does not apply to a delivery made into the fuel supply tanks of a motor vehicle.

(c) The commissioner by rule may prescribe the form of the statement required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 2, eff. September 1, 2011.

Sec. 17.053. RECORD OF DELIVERY DOCUMENTS; INSPECTION AUTHORIZED. (a) Each dealer shall keep a copy of each document required to be delivered to the dealer by Section 17.052 until the fourth anniversary of the delivery date.

(b) Each distributor, supplier, wholesaler, and jobber of motor fuel shall keep a copy of each document required to be delivered to the dealer by Section 17.052 until the fourth anniversary of the delivery date.

(c) The commissioner or an authorized representative of the commissioner may inspect documents described by this section. On written notice presented by the commissioner or an authorized representative of the commissioner to any employee at a dealer's station or retail outlet or mailed to the principal place of business of a dealer, distributor, supplier, wholesaler, or jobber, the dealer, distributor, supplier, wholesaler, or jobber shall provide the commissioner or authorized representative of the commissioner with the documents described by this section within the period specified in the notice.

(d) The commissioner by rule may:

(1) require each dealer, distributor, supplier, wholesaler, and jobber to maintain and make available to the department:

(A) invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel;

(B) invoices, receipts, work orders, reports, or other

documents, including electronically stored information, showing or describing the installation, maintenance, or repair of:

(i) motor fuel dispensing devices; and

(ii) any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and

(C) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer, distributor, supplier, wholesaler, or jobber; and

(2) prescribe:

(A) the manner of filing documents or records required to be kept under this section or by department rule; and

(B) the time, place, and manner of inspection of the documents or records.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 3, eff. September 1, 2011.

Sec. 17.054. DOCUMENTS RELATING TO POSTING OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. (a) Each dealer shall keep for at least one year a copy of:

(1) each delivery ticket or letter of certification on which the dealer based a posting of the automotive fuel rating of motor fuel contained in a motor fuel pump;

(2) each delivery ticket or letter of certification that is required to be delivered to the dealer under 16 C.F.R. Part 306; and

(3) records of any automotive fuel rating determination made by the dealer under 16 C.F.R. Part 306.

(b) Each distributor or supplier shall keep for at least one year at the distributor's or supplier's principal place of business a copy of each delivery ticket or letter of certification required to be delivered by the distributor or supplier to a dealer in this state under 16 C.F.R. Part 306.

(c) The commissioner or an authorized representative of the

commissioner may inspect a document required to be kept under this section. On written notice presented by the commissioner or an authorized representative of the commissioner to any employee at a dealer's station or retail outlet or mailed to the dealer's principal place of business, the dealer shall provide the commissioner or authorized representative of the commissioner with the documents described by this section within the period specified in the notice.

(d) The commissioner by rule may:

(1) require each dealer to maintain and make available to the department:

(A) invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel;

(B) invoices, receipts, work orders, reports, or other documents, including electronically stored information, showing or describing the installation, maintenance, or repair of:

(i) motor fuel dispensing devices; and

(ii) any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and

(C) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer; and

(2) prescribe:

(A) the manner of filing documents or records required to be kept under this section or by department rule; and

(B) the time, place, and manner of inspection of the documents or records.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 4, eff. September 1, 2011.

Sec. 17.055. SALE OF MOTOR FUEL WITH INACCURATE AUTOMOTIVE FUEL RATING. (a) A dealer may not sell or offer for sale from a motor

fuel pump motor fuel that has an automotive fuel rating lower than the rating for that motor fuel posted on the pump.

(b) A distributor or supplier of motor fuel may not deliver or transfer to a dealer in this state motor fuel that has an automotive fuel rating lower than the certification of the rating the distributor or supplier is required to make to the dealer under federal law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

SUBCHAPTER B-1. MOTOR FUEL QUALITY AND TESTING

Sec. 17.071. MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS. (a) The department by rule shall adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state. The standards must comply with the nationally recognized minimum standards established by:

(1) the American Society for Testing and Materials, for motor fuels other than motor fuels blended with ethanol; and

(2) the National Institute of Standards and Technology, for motor fuels blended with ethanol.

(b) The department may adopt rules as necessary to bring about uniformity between the standards established under this subchapter and the nationally recognized standards described by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 24, eff. January 1, 2010.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 5, eff. September 1, 2011.

Sec. 17.072. TESTING OF MOTOR FUEL QUALITY. (a) The department may collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale, to verify that the motor fuel complies with the minimum standards required by Section 17.071.

(b) On arriving at a facility to conduct testing under Subsection (a), a representative of the department shall notify the owner or manager of the facility of the representative's presence and

purpose.

(c) A person commits an offense if the person refuses to allow a department representative to collect samples or conduct motor fuel testing under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 24, eff. January 1, 2010.

Sec. 17.073. STOP-SALE ORDER; SHUTDOWN OF DISPENSING DEVICES. (a) If the department has reason to believe that motor fuel is in violation of this chapter or a rule adopted under this chapter, or that the motor fuel is being sold or offered for sale in a manner that violates this chapter or a rule adopted under this chapter, the department may:

(1) issue and enforce a written order to stop the sale of the motor fuel;

(2) place on a device used to dispense the motor fuel a tag or other mark with the words "Out of Order"; or

(3) stop the sale of the motor fuel and mark a device used to dispense the motor fuel as out of order.

(b) The department shall present an order issued under this section to the dealer, distributor, jobber, supplier, or wholesaler who is in control of the motor fuel at the time the motor fuel or the dealer, distributor, jobber, supplier, or wholesaler of the motor fuel is inspected by the commissioner. The person who receives the order may not sell motor fuel subject to a stop-sale order or use a device on which the department has placed a tag or other mark under Subsection (a)(2) or (3) until the department determines that the motor fuel or device is in compliance with this chapter and department rules.

Added by Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 24, eff. January 1, 2010.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 6, eff. September 1, 2011.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 17.101. COPIES OF DOCUMENTS; DELIVERY TO FEDERAL

GOVERNMENT. (a) The commissioner, an authorized representative of the commissioner, or the attorney general may copy any manifest, bill of sale, bill of lading, delivery ticket, letter of certification, or other document that the commissioner or attorney general is entitled to inspect under this chapter.

(b) The commissioner, an authorized representative of the commissioner, or the attorney general may deliver a copy of a document described by Subsection (a) to the federal government for the purpose of prosecuting a person for a violation of federal law relating to the sale or transfer of motor fuel.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Sec. 17.102. TESTING; RULES RELATING TO TESTING FREQUENCY. To determine compliance with the standards and enforce rules adopted under Sections 17.051, 17.052, 17.053, 17.055, and 17.103, the commissioner or an authorized representative of the commissioner may test any motor fuel sold in this state, regardless of the existence of a complaint about the fuel. This section does not prohibit the commissioner from adopting rules relating to the frequency of testing motor fuels. In adopting the rules, the commissioner shall consider:

(1) the nature of the violation;

(2) the history of past violations; and

(3) available funds under Section 17.104(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Sec. 17.103. AUTHORITY OF COMMISSIONER TO LIMIT APPLICABILITY OF LAW. If the commissioner determines that certain types of motor fuel, such as diesel or liquefied petroleum gas, are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation of deliveries of those types of motor fuel under this chapter, the commissioner may limit the application of Sections 17.051 and 17.052 to motor fuels sold in sufficient quantity to warrant regulation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06,

eff. April 1, 2009.

Sec. 17.104. RULES; FEES. (a) The commissioner may adopt rules consistent with this chapter for the regulation of the sale of motor fuels, including motor fuels that contain ethanol and methanol.

(b) The commissioner by rule may impose a fee for testing, inspection, or the performance of other services provided as determined necessary by the commissioner in the administration of this chapter. A fee imposed under this subsection shall be collected from each dealer, distributor, jobber, supplier, and wholesaler on a periodic basis determined by the commissioner without regard to whether the motor fuel is subject to regulation under this chapter.

(c) The commissioner by rule shall prescribe the form for reporting and remitting the fees imposed under this section.

(d) Fees collected under this section may be used only to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 25, eff. September 1, 2009.

SUBCHAPTER D. ENFORCEMENT

Sec. 17.151. CONTRACT FOR ENFORCEMENT. The commissioner may contract for the enforcement of this chapter after due notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Sec. 17.152. CIVIL ACTION. (a) If a dealer or a distributor, supplier, wholesaler, or jobber of motor fuel violates Section 17.051, 17.052, 17.053, 17.054, or 17.055, a motor fuel user who purchased the motor fuel and sustained damages or who has a complaint about the product may bring an action against the dealer, distributor, supplier, wholesaler, or jobber.

(b) The action may be brought, without regard to the specific amount of damages, in the district court in any county in which:

(1) the dealer, distributor, supplier, wholesaler, or jobber transacts business; or

(2) the dealer resides.

(c) The court shall award to a motor fuel user who prevails in an action under this section:

(1) the amount of actual damages;

(2) equitable relief as determined by the court to be necessary to remedy the effects of the violation, including a declaratory judgment, permanent injunctive relief, and temporary injunctive relief; and

(3) court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(d) In addition to the remedies provided under Subsection (c), on finding that the defendant wilfully or knowingly violated Section 17.051, 17.052, or 17.053, the trier of fact shall award not more than three times the amount of actual damages.

(e) A violation of Section 17.051, 17.052, 17.053, 17.054, or 17.055 also constitutes a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(f) An action alleging a violation of Section 17.051, 17.052, 17.053, 17.054, or 17.055 must be commenced and prosecuted not later than the second anniversary of the date on which the cause of action accrues.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Sec. 17.153. CIVIL PENALTY. A dealer, distributor, supplier, wholesaler, or jobber who violates Section 17.051, 17.052, 17.053, 17.054, or 17.055 is liable to this state for a civil penalty of not less than $200 and not more than $10,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Sec. 17.154. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly violates Section 17.051, 17.052, 17.053, 17.054, or 17.055 or a rule adopted by the commissioner to enforce or implement those sections.

(b) A person commits an offense if the person knowingly:

(1) refuses to permit a person authorized by Section 17.102 to test any motor fuel sold or held for sale in this state;

(2) refuses to permit inspection of any document required to be kept or delivered by this chapter on request of a person authorized to inspect the documents under Section 17.053 or 17.054; or

(3) mutilates, destroys, secretes, forges, or falsifies any document, record, report, or sign required to be delivered, kept, filed, or posted by this chapter or any rule adopted by the commissioner to enforce this chapter.

(c) An offense under Subsection (a) is a Class C misdemeanor.

(d) An offense under Subsection (b) is a Class B misdemeanor.

(e) The commissioner or the authorized representative of the commissioner may request the appropriate prosecuting attorney to prosecute a violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Sec. 17.155. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. An administrative penalty is imposed and collected in the manner provided by Section 12.020.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(h) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

(i) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 97, Sec. 8, eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 26, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 7, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 8, eff. September 1, 2011.

Sec. 17.156. TOLL-FREE NUMBER. The department shall provide a toll-free telephone number for use by the public in reporting violations of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 913 (H.B. 2925), Sec. 27, eff. September 1, 2009.

CHAPTER 18. CERTIFICATION AND AGRICULTURAL PRODUCT STANDARDS

SUBCHAPTER A. ORGANIC STANDARDS AND CERTIFICATION

Sec. 18.001. DEFINITIONS. In this subchapter:

(1) "Agricultural product" means any raw or processed agricultural commodity or product, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption.

(2) "National organic program" means the program established under the Organic Foods Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended, or any similar federal program.

(3) "Organic" means labeled, advertised, marketed, or otherwise represented as an agricultural product produced in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended, and this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 52, Sec. 5, eff. May 7, 2001; Acts 2003, 78th Leg., ch. 1288, Sec. 1, eff. June 21, 2003.

Sec. 18.002. ORGANIC STANDARDS PROGRAM. (a) The department by rule may create and administer a program for the administration and enforcement of standards related to organic agricultural products, including certification of persons who produce, process, distribute, or handle organic agricultural products, and may regulate the use of "organic" and related terms.

(b) Any program created by the department under Subsection (a) must be consistent with the provisions of the national organic program.

(c) To the extent consistent with federal law, the department by rule may adopt standards related to organic agricultural products other than the standards established by the national organic program.

(d) The department may enter into an agreement with the United States Department of Agriculture to act as an organic certifying agent or to provide primary enforcement of state and national standards relating to organic agricultural products.

(e) In regulating organic agricultural products under this subchapter, the department may require certification, registration, or other documentation the department considers necessary:

(1) to ensure the integrity of the state and national organic programs;

(2) to ensure the marketability of organic agricultural products produced in this state; and

(3) to meet the authentication or verification requirements of the federal government, another state, or a foreign country relating to organic agricultural products.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 2, eff. June 21, 2003.

Sec. 18.003. ORGANIC CERTIFICATION. (a) The department may certify each person who produces, processes, distributes, or handles an organic agricultural product in this state.

(b) A person may apply for any required certification under this subchapter by submitting the following, as prescribed by department rule:

(1) an application for certification;

(2) a plan for production, processing, distribution, or handling of organic agricultural products; and

(3) a fee.

(c) The department by rule may require a person certified under this subchapter to submit an annual report of that person's production, processing, distribution, or handling of organic agricultural products, along with an annual reporting fee.

(d) The department may by written notice require that a person certified under this subchapter submit any additional report, including copies of records, the department considers necessary to investigate or monitor production, processing, distribution, or handling of organic agricultural products.

(e) A certificate issued under this subchapter remains in effect until surrendered, suspended, or revoked in accordance with procedures established by department rule and Section 18.0075.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 211, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1288, Sec. 3, eff. June 21, 2003.

Sec. 18.004. REGISTRATION PROGRAM. The department by rule may establish a voluntary or mandatory registration program for persons who produce, process, distribute, handle, or advertise organic products in this state and for persons who certify any producers, processors, distributors, or handlers located in this state.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.18, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 4, 5, 12, eff. June 21, 2003.

Sec. 18.006. FEES. (a) The department by rule may require a fee for each:

(1) application for certification;

(2) application for registration or registration renewal;

(3) annual report required by the department;

(4) certificate issued by the department; and

(5) document required by the federal government, another state, or a foreign country that is issued by the department under this subchapter.

(b) The department may establish:

(1) a different fee amount for each fee under Subsection (a); and

(2) a fee schedule for each fee under Subsection (a).

(c) The department may establish a late fee in an amount that is not more than twice the amount of the fee authorized under Subsection (a) and required to be paid by a date established by rule or by written notice provided to the person who owes the fee.

(d) The department shall set fees under this subchapter in amounts that enable it to recover the costs of administering this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.19, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 6, eff. June 21, 2003.

Sec. 18.007. DENIAL, SUSPENSION, OR REVOCATION OF ORGANIC CERTIFICATION OR REGISTRATION. The department may deny, suspend, or revoke a certification or registration issued under this subchapter if the person to whom the certification or registration was issued:

(1) makes a false representation material to a matter governed by this subchapter; or

(2) violates or refuses to comply with this subchapter or a rule or instruction of the department under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 7, eff. June 21, 2003.

Sec. 18.0075. ADMINISTRATIVE PROCEDURES. (a) To the extent consistent with the requirements of the national organic program, the department by rule shall adopt administrative procedures relating to assessment of administrative penalties and other sanctions for violations of this subchapter. Chapter 2001, Government Code, does

not apply to department rules adopted under this subchapter to the extent that Chapter 2001, Government Code, conflicts with the requirements of the national organic program.

(b) The department shall provide a person with written notice of the department's intent to assess the person with an administrative penalty or other sanction. If the department requires a written response to the notice, the department shall allow the person not less than 10 days after the date the person receives the notice to provide the department with the written response. A written response may contain an admission of a violation of this subchapter or rule adopted under this subchapter, as applicable, and an agreement to assessment of the applicable administrative penalty or sanction.

(c) The department's administrative procedures may provide for a default judgment without a hearing for failure to submit to the department a written response under Subsection (b) that contains a request for a hearing and a general or specific denial that the department's action is warranted by the facts or law.

(d) A default judgment may be entered under this section by order of the commissioner. The order entering a default judgment is final on the day the commissioner issues the order.

(e) A default judgment may be appealed for review de novo to a Travis County district court not later than the first anniversary of the date the order is issued under Subsection (d).

(f) On appeal, the court may only consider the issues of whether the appellant received proper notice as required by Subsection (b) and whether the department received a proper response under Subsection (b). The appellant has the burden of proof to establish, by a preponderance of the evidence, that proper notice was not received by the appellant or that a proper response under Subsection (b) was received by the department. If the appellant prevails, the default judgment shall be vacated and the case shall be remanded to the department for an administrative hearing on the substantive issues raised by the department's notice.

(g) The State Office of Administrative Hearings shall conduct any hearing required by a rule of the department adopted under this subchapter.

(h) In the absence of administrative procedures adopted by the department under this section, the procedures under Chapter 12 and under Chapter 2001, Government Code, apply to the assessment of

administrative penalties or license sanctions, except that the procedures may, on motion of a party or on the administrative law judge's own motion, be modified by the judge as necessary to comply with standards and procedures under the national organic program.

Added by Acts 2003, 78th Leg., ch. 1288, Sec. 8, eff. June 21, 2003.

Sec. 18.008. PENALTY. (a) A person commits an offense if the person knowingly:

(1) violates this subchapter; or

(2) fails to comply with a notice, order, or rule of the department under this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.009. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed $10,000 for each violation. Each day a violation continues is a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the general revenue fund. All civil penalties recovered in suits instituted by a county or district attorney under this section shall be divided between the state and the county in which the county or district attorney brought suit, with 50 percent of the recovery to be paid to the general revenue fund and 50 percent to the county.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged

violation is threatened or is occurring.

(e) This section is applicable only if the department chooses to use civil remedy as opposed to criminal penalty under Section 18.008.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 9, eff. June 21, 2003.

Sec. 18.010. STOP-SALE ORDER. (a) If an organic agricultural product is being sold or distributed in violation of this subchapter or a rule adopted under this subchapter, the department may issue a written order to stop the sale or distribution of the product by a person in control of the product. The product named in the order may not be sold or distributed while labeled, marketed, advertised, or otherwise represented as "organic" until:

(1) permitted by a court under Subsection (b); or

(2) the department determines that the sale or distribution of the product is in compliance with this subchapter and rules adopted under this subchapter.

(b) A person in control of the product named in the order may bring suit in a court in the county where the product is located. After a hearing, the court may permit the product to be sold if the court finds the product is not being sold in violation of this subchapter or a department rule issued under this subchapter.

(c) This section does not limit the department's right to act under another section of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 52, Sec. 6, eff. May 7, 2001; Acts 2003, 78th Leg., ch. 1288, Sec. 10, eff. June 21, 2003.

Sec. 18.011. PUBLIC INFORMATION. Information created, collected, assembled, or maintained by the department under this subchapter is public information, except that the department by rule may exempt specified information from disclosure but only to the extent necessary to comply with the national organic program.

Added by Acts 2003, 78th Leg., ch. 1288, Sec. 11, eff. June 21, 2003.

SUBCHAPTER B. AGRICULTURAL PRODUCT STANDARDS

Sec. 18.051. PRODUCT CERTIFICATION PROGRAMS. (a) The department may establish certification programs relating to the protection, sale, advertising, marketing, transporting, or other commercial handling of agricultural, horticultural, or related products in this state if the department determines that a certification program is warranted to:

(1) ensure genetic purity, identity, or disease or pest resistance; or

(2) help prevent the spread of insects, other pests, diseases, or pathogens.

(b) The department may regulate the use of the term "Texas Certified Product," other terms that indicate product quality standards, and symbols connected with those terms as used with a product regulated under this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.052. STANDARDS. The department by rule may develop minimum certification standards for the administration and enforcement of this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.053. FEES. The department may set fees under this subchapter in amounts that do not exceed the amounts reasonably necessary to enable the department to recover the costs of administering this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.054. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted by the department under this subchapter is liable for a civil penalty not to exceed $500 for each violation. Each day a violation continues is a separate

violation for purposes of assessment of a civil penalty under this section.

(b) A civil penalty recovered by the department under this section shall be deposited in the general revenue fund. A civil penalty recovered in an action instituted by a local government under this section shall be equally divided between this state and the local government, with 50 percent of the penalty recovered paid to the general revenue fund and the other 50 percent to the general fund of the local government instituting the action.

(c) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall bring an action to collect the civil penalty.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On the request of the department, the attorney general or the county attorney or district attorney of the county in which the alleged violation is threatened or occurring shall bring an action for the injunctive relief. Venue for the action lies in the county in which the alleged violation is threatened or occurring.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. AGRICULTURAL PRODUCTION PROCESS CERTIFICATION PROGRAM

Sec. 18.071. AGRICULTURAL CERTIFICATION. The department may establish certification programs under this subchapter relating to the protection, sale, advertising, marketing, or related production processes in this state.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 196, Sec. 3, eff. Sept. 1, 2003.

Sec. 18.072. CERTIFICATION STANDARDS. The department by rule may develop programs establishing minimum certification standards for production processes.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.073. FEES. The department may set fees under this subchapter in amounts that do not exceed the amounts reasonably necessary to enable the department to recover the costs of administering this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.074. ADMINISTRATIVE PENALTY. The department may assess an administrative penalty under Section 12.020 if the department determines that a person is falsely claiming to be certified under this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 19. CITRUS BUDWOOD AND CITRUS NURSERY STOCK CERTIFICATION PROGRAMS

Sec. 19.001. PURPOSE. The purpose of this chapter is to:

(1) establish a certified citrus budwood program to produce citrus trees that are horticulturally sound, are free from virus and other recognizable bud-transmissible diseases, and are of an assured type of citrus variety;

(2) establish a certified citrus nursery program for citrus nursery stock sold in the citrus zone as part of an effort to produce citrus trees that are free from pathogens, including citrus greening disease, which is spread by the Asian citrus psyllid;

(3) provide standards for foundation groves, certified citrus nurseries, and certified citrus nursery trees; and

(4) provide for an advisory council to make recommendations on the implementation of the programs.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 1, eff. June 19, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 2, eff. September 1, 2013.

Sec. 19.002. DEFINITIONS. In this chapter:

(1) "Advisory council" means the citrus budwood advisory council.

(1-a) "Asian citrus psyllid" has the meaning assigned by Section 80.003.

(2) "Certified citrus budwood" means citrus budwood that meets standards required by the department for assurance of type of citrus variety and for freedom from dangerous pathogens.

(2-a) "Certified citrus nursery" means a nursery that meets standards required by the department for production of citrus nursery stock free from pests of citrus.

(2-b) "Certified citrus nursery stock" means citrus nursery stock propagated from cuttings or by budding, grafting, or air-layering and grown from certified citrus budwood that meets standards required by the department for assurance of type of citrus variety and for freedom from dangerous pathogens.

(3) "Citrus budwood" means a portion of a stem or branch of a citrus tree containing buds used in propagation by budding or grafting.

(4) "Citrus grower" means a citrus producer growing and producing citrus nursery stock for commercial or retail marketing purposes.

(5) "Citrus nursery" means a producer of citrus trees propagated through the budding or grafting of citrus trees using certified citrus budwood.

(5-a) "Citrus nursery stock" means citrus plants to be used in a commercial or noncommercial setting.

(6) "Foundation grove" means a grove containing parent trees from which certified citrus budwood is obtained.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 2, eff. June 19, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 3, eff. September 1, 2013.

Sec. 19.003. SCOPE. Except as otherwise provided by this chapter, this chapter applies to all citrus nurseries and citrus growers.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 3, eff. June 19, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 4, eff. September 1, 2013.

Sec. 19.0031. CITRUS ZONE. The following counties are designated as the citrus zone of this state for the purpose of this chapter: Brooks, Cameron, Hidalgo, Jim Hogg, Kenedy, Starr, Willacy, and Zapata.

Added by Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 5, eff. September 1, 2013.

Sec. 19.004. CITRUS BUDWOOD CERTIFICATION PROGRAM. (a) The citrus budwood certification program is established. The department administers the program.

(b) The department shall accomplish the purposes of the program through the designation of foundation groves, the certification of citrus budwood grown in foundation groves, and the periodic inspection of citrus nurseries to ensure that the citrus nurseries are using certified citrus budwood.

(c) The department, with the advice of the advisory council, shall set standards for foundation groves, set standards for citrus budwood certification, designate individual foundation groves, and inspect citrus nurseries and the records of citrus nurseries to ensure that the citrus nurseries are using certified citrus budwood.

(d) The department or the advisory council may not require the use of certified citrus budwood until the department and the advisory council determine that an adequate supply of certified citrus budwood is available.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 4, eff. June 19, 1997.

Sec. 19.0041. CITRUS NURSERY STOCK CERTIFICATION PROGRAM. (a)

The citrus nursery stock certification program is established. The department administers the program.

(b) The department shall accomplish the purposes of the program through the certification of nurseries growing or selling citrus nursery stock in the citrus zone.

(c) All citrus nursery stock grown in or sold in the citrus zone must be grown in a certified citrus nursery.

(d) The department, in consultation with the advisory council, shall set standards for certified citrus nurseries and citrus nursery stock certification, and shall inspect citrus nurseries and the records of citrus nurseries to ensure that citrus nurseries comply with the provisions of the citrus nursery stock certification program.

(e) The department shall provide for an annual renewal of a certificate for a certified citrus nursery, including the imposition of applicable fees. The department shall renew the certificate if the nursery maintains the standards set by the department under Subsection (d).

Added by Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 5, eff. September 1, 2013.

Sec. 19.005. ADVISORY COUNCIL. (a) The commissioner shall appoint the advisory council. The advisory council is composed of seven members, including:

(1) one member representing the department;

(2) one member representing The Texas A&M University-Kingsville Citrus Center at Weslaco;

(3) two members representing the citrus nursery industry;

(4) two members representing citrus growers; and

(5) one member having specialized knowledge in citrus diseases and pests.

(b) A member serves a two-year term and may be reappointed.

(c) Members of the advisory council are not eligible for reimbursement of expenses arising from service on the advisory council.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.

Sec. 19.006. RULES. The department, with the advice of the advisory council, shall adopt standards and rules:

(1) necessary to administer the citrus budwood certification program and the citrus nursery certification program;

(2) to regulate the sale of citrus budwood and citrus nursery trees as supplies of certified citrus budwood and certified citrus nursery trees become available; and

(3) requiring citrus nursery stock sold in the citrus zone to be propagated:

(A) using certified citrus budwood; and

(B) in an enclosed structure that:

(i) is built to specifications as determined by department rule; and

(ii) has a top and sides that are built to exclude insects that may transmit citrus pathogens.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 5, eff. June 19, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 6, eff. September 1, 2013.

Sec. 19.007. CERTIFICATION STANDARDS. (a) The department shall establish:

(1) the certification standards for genetic purity for varieties of citrus budwood by type;

(2) procedures that must be followed to prevent the introduction of dangerous citrus pathogens into budwood stock from and in foundation groves;

(3) procedures for certification of citrus budwood grown in foundation groves; and

(4) procedures for certification of citrus nurseries and citrus nursery trees.

(b) The department shall establish standards and procedures for:

(1) inspecting and testing for diseases, using current technologies in disease diagnosis, and for desirable horticultural characteristics of citrus budwood grown in designated foundation

groves;

(2) certifying citrus budwood and citrus nurseries meeting requirements established under this chapter;

(3) maintaining a source of citrus budwood of superior tested varieties for distribution to the citrus industry;

(4) verifying propagation of citrus varieties and special rootstocks for growers on request, including an inspection of the citrus nursery's books and records;

(5) maintaining appropriate records required for participation in the citrus budwood certification and citrus nursery stock certification programs;

(6) inspecting citrus nurseries to ensure that the structures in which citrus nursery stock is propagated meet standards set by the department, including standards for:

(A) size;

(B) construction;

(C) insect resistance;

(D) citrus nursery sanitation;

(E) movement of the citrus nursery stock from one structure to another at the nursery;

(F) proximity to nearby citrus groves; and

(G) other standards for the operation of a certified nursery as may be required by the department; and

(7) requiring each citrus nursery to submit source tree bud cutting reports to the department not later than the 30th day after citrus trees are budded.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 6, eff. June 19, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 7, eff. September 1, 2013.

Sec. 19.008. APPLYING FOR FOUNDATION GROVE DESIGNATION, BUDWOOD CERTIFICATION, AND CITRUS NURSERY CERTIFICATION. (a) A person who desires to operate a foundation grove and produce certified citrus budwood for sale to the citrus industry must apply for foundation grove designation and citrus budwood certification in accordance with

rules adopted by the department.

(b) A person who desires to operate a citrus nursery to propagate citrus nursery stock for sale in the citrus zone must apply for citrus nursery certification in accordance with rules adopted by the department.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 7, eff. September 1, 2013.

Sec. 19.009. REVOCATION. The department shall establish rules regarding the revocation of foundation grove designation, citrus budwood certification, and citrus nursery certification.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 7, eff. September 1, 2013.

Sec. 19.010. PROGRAM COST; FEES; ACCOUNT. (a) The department shall set and collect fees from persons applying for foundation grove designation, citrus budwood certification, or citrus nursery certification. The department shall set the fees in an amount that recovers the department's costs in administering and enforcing the citrus budwood certification program and the citrus nursery certification program. The department may also accept funds from the citrus industry or other interested persons to cover the costs of administering the programs.

(b) All fees and funds collected or contributed under this section shall be deposited to the credit of an account in the general revenue fund. Money in the account may be appropriated only to the department for the purpose of administering and enforcing this chapter.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 7, eff. September 1, 2013.

Sec. 19.011. STOP-SALE ORDER. (a) If a person offers citrus budwood or a citrus nursery tree for sale falsely claiming that it is certified, that it comes from a designated foundation grove, or that it comes from a certified citrus nursery, or offers citrus budwood, a citrus nursery tree, or citrus nursery stock for sale in violation of rules adopted under this chapter, the department may issue a written order to stop the sale of that citrus budwood, citrus nursery tree, or citrus nursery stock. A person may not sell citrus budwood, a citrus nursery tree, or citrus nursery stock that is subject to a stop-sale order under this section until:

(1) the sale is permitted by a court under Subsection (b); or

(2) the department determines that the sale of the citrus budwood, citrus nursery tree, or citrus nursery stock is in compliance with this chapter and rules adopted under this chapter.

(a-1) The department may issue a written order to stop the sale of citrus nursery stock from a citrus nursery or to stop the operation of all or part of a citrus nursery if a person propagates citrus nursery stock in a citrus nursery for sale in the citrus zone and:

(1) the person falsely claims that the citrus nursery is certified; or

(2) if the citrus nursery is certified, the person fails to comply with the rules adopted under this chapter.

(a-2) A person may not sell citrus nursery stock out of a citrus nursery, or operate a citrus nursery or a part of a citrus nursery, that is subject to a stop-sale order under this section until:

(1) the sale is permitted by a court under Subsection (b); or

(2) the department determines that the citrus nursery is in compliance with this chapter and rules adopted under this chapter.

(b) The person named in the order may bring suit in a court in the county where the citrus budwood, citrus nursery tree, or citrus nursery subject to the stop-sale order is located. After a hearing, the court may, as applicable, permit the citrus budwood or citrus nursery tree to be sold, or permit the citrus nursery to continue operations, if the court finds, as applicable, the citrus budwood or

citrus nursery tree is not being offered for sale or that the citrus nursery is not operating in violation of this chapter.

(c) This section does not limit the department's right to act under another section of this chapter.

(d) The department shall inspect each citrus nursery in the citrus zone not less than once every two months in order to enforce this section.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 7, eff. June 19, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 7, eff. September 1, 2013.

Sec. 19.012. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) sells or offers to sell citrus budwood, a citrus nursery tree, or citrus nursery stock falsely claiming that it is certified or that it comes from a designated foundation grove or a certified citrus nursery;

(2) uses, for commercial purposes, citrus budwood that is required by department rule to be certified and is not certified or does not come from a designated foundation grove;

(3) sells or offers to sell in the citrus zone citrus nursery stock that has not been propagated in a certified citrus nursery;

(4) operates, in the citrus zone for the propagation of citrus nursery stock, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter;

(5) operates, outside of the citrus zone for the propagation of citrus nursery stock for sale in the citrus zone, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter; or

(6) fails to comply with an order of the department issued under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.06, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 8, eff. September 1, 2013.

Sec. 19.013. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter, a rule adopted under this chapter, or an order 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 is a separate violation for purposes of civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section in a suit filed by the attorney general shall be deposited to the credit of an account in the general revenue fund. A civil penalty collected under this section in a suit filed by a county or district attorney shall be divided between the state and the county in which the county or district attorney brought suit, with 50 percent of the amount collected paid to the state for deposit to the credit of an account in the general revenue fund and 50 percent of the amount collected paid to the county. Funds credited to the account in the general revenue fund may be appropriated only to the department for purposes of administering and enforcing this chapter and rules adopted under this chapter.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or an order adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(e) A person is not subject to both a criminal penalty under

Section 19.012 and a civil penalty under this section for the same violation of law.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 9, eff. September 1, 2013.

Sec. 19.014. ADMINISTRATIVE PENALTIES. The department may assess an administrative penalty under Chapter 12 for a violation of this chapter if the department finds that a person:

(1) sells or offers to sell citrus budwood, a citrus nursery tree, or citrus nursery stock falsely claiming that it is certified or that it comes from a designated foundation grove or a certified citrus nursery under this chapter;

(2) uses citrus budwood in violation of rules adopted under this chapter;

(3) uses, for commercial purposes, citrus budwood that is required by department rule to be certified and is not certified or does not come from a designated foundation grove;

(4) sells or offers to sell citrus nursery stock in the citrus zone falsely claiming that the citrus nursery stock was propagated in a certified citrus nursery;

(5) operates, in the citrus zone for the propagation of citrus nursery stock, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter;

(6) operates, outside of the citrus zone for the propagation of citrus nursery stock for sale in the citrus zone, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter; or

(7) fails to comply with an order of the department issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 358, Sec. 1, eff. June 8, 1995.
Amended by Acts 1997, 75th Leg., ch. 1117, Sec. 9, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.07, eff.

September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 166 (S.B. 1427), Sec. 10, eff. September 1, 2013.

CHAPTER 21. GRANT PROGRAM FOR DISTRIBUTION OF SURPLUS AGRICULTURAL PRODUCTS

Sec. 21.001. CREATION. The department by rule shall develop a program to award grants to nonprofit organizations for the purpose of collecting and distributing surplus agricultural products to food banks and other charitable organizations that serve needy or low-income individuals.

Added by Acts 2001, 77th Leg., ch. 49, Sec. 1, eff. Sept. 1, 2001. Renumbered from Agriculture Code Sec. 20.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(1), eff. Sept. 1, 2003.

Sec. 21.002. ELIGIBILITY. Subject to available funds, a nonprofit organization is eligible to receive a grant under this chapter if the organization:

(1) has at least five years of experience coordinating a statewide network of food banks and charitable organizations that serve each county of this state;

(2) operates a program that coordinates the collection and transportation of surplus agricultural products to a statewide network of food banks that provide food to needy or low-income individuals; and

(3) submits to the department, in the manner and time prescribed by the department, a proposal for the collection and distribution to food banks or other charitable organizations for use in providing food to needy or low-income individuals of surplus agricultural products, including:

(A) a description of the proposal;

(B) a schedule of projected costs for the proposal;

(C) measurable goals for the proposal; and

(D) a plan for evaluating the success of the proposal.

Added by Acts 2001, 77th Leg., ch. 49, Sec. 1, eff. Sept. 1, 2001. Renumbered from Agriculture Code Sec. 20.002 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(1), eff. Sept. 1, 2003.

Sec. 21.003. REPORT. A nonprofit organization that receives a grant under this chapter must report the results of the project to the department in the manner prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 49, Sec. 1, eff. Sept. 1, 2001. Renumbered from Agriculture Code Sec. 20.003 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(1), eff. Sept. 1, 2003.

For expiration of this chapter, see Section 22.009.

CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION INCENTIVE PROGRAM

Sec. 22.001. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to reduce air pollution, improve air quality, protect public health, help this state diversify its energy supply, and divert waste from landfills through new price-support incentives to encourage the construction of facilities to generate electric energy with certain types of agricultural residues, forest wood waste, urban wood waste, storm-generated biomass debris, and energy-dedicated crops.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.002. DEFINITIONS. In this chapter:

(1) "Co-firing biomass" means a solid fuel that:

(A) contains qualified agricultural biomass;

(B) is produced by a renewable biomass aggregator and bio-coal fuel producer; and

(C) is used to supplement coal combustion for the generation of electricity.

(1-a) "Diverter":

(A) means:

(i) a person or facility that qualifies for an exemption under Section 361.111 or 363.006, Health and Safety Code;

(ii) a handler of nonhazardous industrial waste that is registered or permitted under Chapter 361, Health and Safety

Code;

(iii) a facility that separates recyclable materials from a municipal solid waste stream and that is registered or permitted under Chapter 363, Health and Safety Code, as a municipal solid waste management facility; or

(iv) a renewable biomass aggregator and bio-coal fuel producer that operates an integrated harvesting, transportation, and solid biofuel conversion facility for qualified agricultural biomass; and

(B) does not include a facility that uses biomass to generate electric energy.

(2) "Farmer" means the owner or operator of an agricultural facility that produces qualified agricultural biomass.

(3) "Forest wood waste" includes residual tops and limbs of trees, unused cull trees, pre-commercial thinnings, and wood or debris from noncommercial tree species, slash, or brush.

(4) "Logger" means a harvester of forest wood waste, regardless of whether the harvesting occurs as a part of the harvesting of merchantable timber.

(5) "Qualified agricultural biomass" means:

(A) agricultural residues that are of a type that historically have been disposed of in a landfill, relocated from their point of origin and stored in a manner not intended to enhance or restore the soil, burned in open fields in the area from which they are derived, or burned in fields and orchards that continue to be used for the production of agricultural goods, and includes:

(i) field or seed crop residues, including straw from rice or wheat, cotton gin trash, corn stover, grain sorghum (milo) harvest residues, sugarcane bagasse, and switchgrass;

(ii) fruit or nut crop residues, including orchard or vineyard prunings and removals;

(iii) forest wood waste or urban wood waste, including state designated forest management cuttings and brush management cuttings from private lands; and

(iv) agricultural livestock waste nutrients; and

(B) a crop grown and used specifically for its energy generation value, including a crop consisting of a fast-growing tree species.

(5-a) "Renewable biomass aggregator and bio-coal fuel producer" means an operator of an integrated harvesting,

transportation, and fuel conversion facility that aggregates qualified agricultural or forest biomass and produces renewable fuel suitable for replacing coal or co-firing with coal.

(6) "Storm-generated biomass debris" means biomass-based residues that result from a natural weather event, including a hurricane, tornado, or flood, that would otherwise be disposed of in a landfill or burned in the open. The term includes:

(A) trees, brush, and other vegetative matter that have been damaged or felled by severe weather but that would not otherwise qualify as forest wood waste; and

(B) clean solid wood waste that has been damaged by severe weather but that would not otherwise qualify as urban wood waste.

(7) "Urban wood waste" means:

(A) solid wood waste material, other than pressure-treated, chemically treated, or painted wood waste, that is free of rubber, plastic, glass, nails, or other inorganic material; and

(B) landscape or right-of-way trimmings.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 1, eff. September 1, 2009.

Sec. 22.003. GRANT PROGRAM. (a) The department shall develop and administer an agricultural biomass and landfill diversion incentive program to make grants to farmers, loggers, diverters, and renewable biomass aggregators and bio-coal fuel producers who provide qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to facilities that use biomass to generate electric energy in order to provide an incentive for the construction of facilities for that purpose and to:

(1) promote economic development;

(2) encourage the use of renewable sources in the generation of electric energy;

(3) reduce air pollution caused by burning agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris in open fields; and

(4) divert waste from landfills.

(b) Subject to Section 22.005, a farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer is entitled to receive a grant in the amount of $20 for each bone-dry ton of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris provided by the farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer in a form suitable for generating electric energy to a facility that:

(1) is located in this state;

(2) was placed in service after August 31, 2009;

(3) generates electric energy sold to a third party by using qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris;

(4) uses the best available emissions control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the air contaminant emissions resulting from the facility;

(5) maintains its emissions control equipment in good working order; and

(6) is in compliance with its operating permit issued by the Texas Commission on Environmental Quality under Chapter 382, Health and Safety Code.

(c) The commissioner by rule may authorize a grant to be made for providing each bone-dry ton of a type or source of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris in an amount that is greater than the amount provided by Subsection (b) if the commissioner determines that a grant in a greater amount is necessary to provide an adequate incentive to use that type or source of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to generate electric energy.

(d) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall assist the department as necessary to enable the department to determine whether a facility meets the requirements of Subsection (b) for purposes of the eligibility of farmers, loggers, diverters, and renewable biomass aggregators and bio-coal fuel producers for grants under this chapter.

(e) To receive a grant under this chapter, a farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer must deliver qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to a facility described by Subsection (b). The operator of each facility described by that subsection shall:

(1) verify and document the amount of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris delivered to the facility for the generation of electric energy; and

(2) make a grant on behalf of the department in the appropriate amount to each farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer who delivers qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to the facility.

(f) The department quarterly shall reimburse each operator of a facility described by Subsection (b) for grants under this chapter made by the operator during the preceding quarter to eligible farmers, loggers, diverters, and renewable biomass aggregators and bio-coal fuel producers. To receive reimbursement for one or more grants, an operator of a facility described by that subsection must file an application with the department that verifies the amount of the grants made by the operator during the preceding quarter for which the operator seeks reimbursement.

(g) The department may contract with and provide for the compensation of private consultants, contractors, and other persons to assist the department in administering the agricultural biomass and landfill diversion incentive program.

(h) Notwithstanding Subsection (b)(2), a facility placed in service before August 31, 2009, is eligible for reimbursement under this chapter if another facility placed in operation after August 31, 2009, is located 25 miles or less from the existing facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 2, eff. September 1, 2009.

Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION INCENTIVE PROGRAM ACCOUNT. (a) The agricultural biomass and landfill diversion incentive program account is an account in the general revenue fund. The account is composed of:

(1) legislative appropriations;

(2) gifts, grants, donations, and matching funds received under Subsection (b); and

(3) other money required by law to be deposited in the account.

(b) The department may solicit and accept gifts in kind, donations, and grants of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of this chapter.

(c) Money in the account may be appropriated only to the department for the purpose of implementing, maintaining, and administering the agricultural biomass and landfill diversion incentive program.

(d) Income from money in the account shall be credited to the account.

(e) The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 3, eff. September 1, 2009.

Sec. 22.005. LIMITATION ON GRANT AMOUNT; SCHEDULE OF PAYMENTS. (a) The total amount of grants awarded by operators of facilities under Section 22.003 and by the department under Section 22.006 during each state fiscal year may not exceed $30 million.

(b) During each state fiscal year, the department may not pay to an operator of a facility as reimbursements under Section 22.003 or grants under Section 22.006 an amount that exceeds $6 million.

(c) On a determination that money in the agricultural biomass and landfill diversion incentive account is insufficient to pay reimbursements under Section 22.003 or grants under Section 22.006, the department, in consultation with interested parties, may develop

a proportionate and equitable schedule to pay the reimbursements or grants. In developing a schedule to pay reimbursements or grants under this subsection, the department may consider a facility's:

(1) effect on wages and job creation or job retention;

(2) level of capital investment; and

(3) effect on the local economy and the economy of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 5, eff. September 1, 2009.

Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY GENERATION FACILITIES FOR GRANTS. (a) Except as provided by Subsection (b), an operator of a facility that uses biomass to generate electric energy is not eligible to receive a grant under this chapter or under any other state law for the generation of electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris for which a farmer, logger, or diverter has received a grant under this chapter.

(b) An operator of a facility that uses biomass to generate electric energy may receive a grant from the department under this chapter for generating electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that arrives at the facility in a form unsuitable for generating electric energy and that the facility processes into a form suitable for generating electric energy.

(c) To receive a grant from the department under Subsection (b), an operator of a facility must file an application with the department that verifies the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that the facility processed into a form suitable for generating electric energy. The department shall make grants to eligible operators of facilities quarterly, subject to

appropriations. The provisions of this chapter governing grants to farmers, loggers, and diverters, including the provisions governing the amount of a grant, apply to a grant from the department under Subsection (b) to the extent they can be made applicable.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.007. RULES. The commissioner, in consultation with the Public Utility Commission of Texas and the Texas Commission on Environmental Quality, shall adopt rules to implement this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any other provision of this chapter, the department is not required to administer this chapter or adopt rules under this chapter, and the operator of a facility described by Section 22.003(b) is not required to make a grant on behalf of the department, until funds are appropriated for those purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The agricultural biomass and landfill diversion incentive program terminates on August 31, 2019. On September 1, 2019:

(1) any unobligated funds remaining in the agricultural biomass and landfill diversion incentive program account shall be transferred to the undedicated portion of the general revenue fund; and

(2) this chapter expires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

CHAPTER 25. CHILDREN'S ACCESS TO NUTRITIOUS FOOD PROGRAM

Sec. 25.001. CREATION. Using funds appropriated for that purpose, the department by rule shall develop and implement a children's access to nutritious food program to award grants to nonprofit organizations for the purpose of allowing food banks to provide children at risk of hunger or obesity with access to nutritious food outside the school day.

Added by Acts 2009, 81st Leg., R.S., Ch. 107 (H.B. 1622), Sec. 1, eff. September 1, 2009.

Sec. 25.002. ELIGIBILITY. A nonprofit organization is eligible to receive a grant under this chapter if the organization:

(1) has at least five years of experience coordinating a statewide network of food banks and charitable organizations that serves each county of this state;

(2) operates a program through a statewide network of food banks that provides children at risk of hunger or obesity with access to nutritious food outside the school day; and

(3) submits to the department, in the manner and time prescribed by the department, a detailed proposal for a program to purchase and distribute food using grant money to food banks or other charitable organizations that includes:

(A) a schedule of projected costs for the program;

(B) measurable goals for the program; and

(C) a plan for evaluating the success of the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 107 (H.B. 1622), Sec. 1, eff. September 1, 2009.

Sec. 25.003. USE OF FUNDS. A recipient of a grant under this chapter may use the grant only for the purchase of the following nutritious foods:

(1) fresh, frozen, or canned meats that are lean or low in fat content;

(2) dry or canned beans;

(3) nonfat or vegetarian items;

(4) low-fat nut and seed butters;

(5) dry-roasted or raw nuts and seeds;

(6) eggs;
(7) olive oil;
(8) canola oil;
(9) fresh, frozen, or canned fruits with no added sugar;
(10) fresh, frozen, or canned vegetables;
(11) juices that contain 100 percent fruit juice;
(12) foods that contain 100 percent whole grains;
(13) fresh, dry, canned, or ultra-high-temperature pasteurized milk that has a fat content of no greater than one percent;
(14) light yogurt; and
(15) low-fat cheese.

Added by Acts 2009, 81st Leg., R.S., Ch. 107 (H.B. 1622), Sec. 1, eff. September 1, 2009.

Sec. 25.004. REPORT. A nonprofit organization that receives a grant under this chapter must at regular intervals prescribed by the department report the results of the organization's program to the department. A report under this section for a prescribed reporting period must include:
(1) a statement of the amount of food purchased and distributed using grant funds;
(2) a statement of the leveraged value of grant funds;
(3) a list of specific programs that benefited from grant funds; and
(4) a detailed accounting of how grant funds were spent.

Added by Acts 2009, 81st Leg., R.S., Ch. 107 (H.B. 1622), Sec. 1, eff. September 1, 2009.

Sec. 25.005. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 107 (H.B. 1622), Sec. 1, eff. September 1, 2009.

TITLE 3. AGRICULTURAL RESEARCH AND PROMOTION

CHAPTER 41. COMMODITY PRODUCERS BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. POLICY. It is in the interest of the public welfare of the State of Texas that the producers of any agricultural commodity be permitted and encouraged to develop, carry out, and participate in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of the agricultural commodity. The purpose of this chapter is to authorize and prescribe the necessary procedures by which the producers of an agricultural commodity grown in this state may finance those programs. The programs may be devised to alleviate any circumstance or condition that serves to impede the production, marketing, or use of any agricultural commodity.

Acts 1981, 67th Leg., p. 1081, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 1, eff. September 1, 2011.

Sec. 41.002. DEFINITIONS. In this chapter:

(1) "Agricultural commodity" means an agricultural, horticultural, viticultural, or vegetable product, bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer. The term does not include flax.

(2) "Board" means a commodity producers board.

(3) "Commissioner" means the commissioner of agriculture.

(4) "District" means a geographical area within the jurisdiction of a board.

(5) "Processor" means a person within this state who:

(A) is a purchaser, warehouseman, processor, or other commercial handler of an agricultural commodity;

(B) processes planting seeds; or

(C) is the mortgagee of an agricultural commodity if the mortgage did not cover the commodity in its state as a growing crop and if the mortgage was executed at a time when the commodity was ready for marketing.

(6) "Producer" means a person engaged in the business of

producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(7) "Person" means an individual, firm, corporation, association, or any other business unit.

(8) "Secretary-treasurer" means the secretary-treasurer of a board.

Acts 1981, 67th Leg., p. 1082, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 3184, ch. 545, Sec. 1; Acts 1987, 70th Leg., ch. 109, Sec. 1, eff. May 18, 1987; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.02, eff. Jan. 11, 2004.

SUBCHAPTER B. CERTIFICATION OF ORGANIZATIONS TO CONDUCT REFERENDUM AND ELECTION

Sec. 41.011. PETITION FOR CERTIFICATION. (a) Any nonprofit organization authorized under the laws of this state representing the producers of an agricultural commodity may petition the commissioner for certification as the organization authorized to conduct an assessment referendum and an election of a commodity producers board.

(b) If the referendum and election are to be conducted in a limited area of the state, the petition must describe the boundaries of the area to be included.

(c) The petition must propose a board with an odd number of five to 15 members.

Acts 1981, 67th Leg., p. 1082, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 7.01, eff. Sept. 1, 2003.

Sec. 41.012. CERTIFICATION BY COMMISSIONER. (a) Within 30 days following the day on which a petition for certification is received, the commissioner shall hold a public hearing to consider the petition.

(b) If the commissioner determines that, on the basis of testimony presented at the public hearing, the petitioning organization is representative of the producers of the agricultural commodity within the boundaries described in the petition and that

the petition conforms to the purposes and provisions of this chapter, the commissioner shall certify that the organization is representative of the producers of the commodity within the described area and is authorized to conduct the assessment referendum and board election.

Acts 1981, 67th Leg., p. 1083, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. REFERENDA AND ELECTIONS

Sec. 41.021. CERTIFIED ORGANIZATION TO CONDUCT REFERENDUM AND ELECTION. In accordance with this subchapter and the rules of the commissioner, a certified organization may conduct a referendum of the producers of an agricultural commodity on the proposition of whether or not the producers shall levy an assessment on themselves to finance programs of research, disease and insect control, predator control, education, and promotion designed to encourage the production, marketing, and use of the commodity. At the same time, the certified organization may conduct an election of members to a commodity producers board for the commodity.

Acts 1981, 67th Leg., p. 1083, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.022. RULES OF COMMISSIONER. In order to ensure efficient and honest elections and efficient canvassing and reporting of returns, the commissioner shall adopt rules regulating the form of the ballot, the conduct of the election, and the canvass and reporting of returns.

Acts 1981, 67th Leg., p. 1083, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.023. NOTICE OF REFERENDUM AND ELECTION. (a) The certified organization shall give public notice of:

(1) the date, hours, and polling places for voting in the referendum and election;

(2) the estimated amount and basis of the assessment proposed to be collected;

(3) whether a producer exemption is to be allowed in accordance with Section 41.082; and

(4) a description of the manner in which the assessment is to be collected and the proceeds administered and used.

(b) The commissioner by rule shall prescribe the manner for providing public notice under Subsection (a).

Acts 1981, 67th Leg., p. 1083, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 3184, ch. 545, Sec. 2.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 4.01, eff. September 1, 2013.

Sec. 41.024. BASIS OF REFERENDUM AND ELECTION; ELIGIBLE VOTERS. (a) Subject to the approval of the commissioner, the certified organization may conduct the referendum and election under this chapter either on an area or statewide basis, as determined by the organization in its petition for certification.

(b) A producer of the agricultural commodity is eligible to vote in the referendum and election if:

(1) the producer's production occurs within the area described in the organization's petition; and

(2) the producer would be required under the referendum to pay the assessment.

Acts 1981, 67th Leg., p. 1083, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.025. CANDIDATES FOR BOARD; WRITE-IN VOTES. (a) Any producer who is eligible to vote at the referendum and election is eligible to be a member or a candidate for membership on the commodity producers board.

(b) A potential candidate must file with the certified organization an application to have his or her name printed on the ballot. The application must be signed by the candidate and by at least 10 producers who are eligible to vote at the election. The application must be filed at least 30 days before the date set for the election.

(c) A voter may vote for board members by writing in the name of any eligible person whose name is not printed on the ballot.

Acts 1981, 67th Leg., p. 1084, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.026. PREPARATION AND DISTRIBUTION OF BALLOT. (a) The certified organization shall prepare and distribute all necessary ballots in advance of the referendum and election.

(b) The referendum provisions of the ballot shall specify a maximum rate for the authorized assessment.

(c) The election provisions of the ballot may be printed only with the names of candidates who have filed valid petitions under Section 41.025 of this code, but the ballot shall provide a space for write-in votes.

(d) The ballot shall provide a space for the voter to certify the volume of the voter's production of the commodity within the area described in the petition during the preceding year or other relevant production period, as designated on the ballot.

Acts 1981, 67th Leg., p. 1084, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.027. EXPENSES OF ELECTION. The certified organization is responsible for all expenses incurred in connection with the referendum and election, but it may be reimbursed for actual and necessary expenses out of funds deposited in the treasury of the board if the assessment is levied and collected.

Acts 1981, 67th Leg., p. 1084, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.028. EXEMPTIONS FOR PRODUCERS. The original referendum and subsequent biennial board elections may provide exemptions for producers within the boundaries described in the petition if the exemptions are included in full written form on the election ballot and are approved by two-thirds or more of those voting in the election.

Acts 1981, 67th Leg., p. 1084, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.029. VOID BALLOTS. (a) In any contest of an election, a ballot is void if the voter overstated his or her volume of production by more than 10 percent. Any other error in stating

volume of production is not grounds for invalidating the ballot.

(b) If a ballot is void or if any other error is made in stating production volume, the returns shall be corrected and the results adjusted accordingly.

Acts 1981, 67th Leg., p. 1084, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.030. FINDINGS OF COMMISSIONER. On receiving the report of the returns of a referendum and election, the commissioner shall determine:

(1) the number of votes cast for and against the referendum proposition;

(2) the total volume of production of the commodity during the relevant production period in the area described in the petition;

(3) the percentage of the total volume of production of the commodity that was produced by those voting in favor of the referendum proposition; and

(4) the appropriate number of candidates receiving the highest number of votes for membership on the commodity producers board.

Acts 1981, 67th Leg., p. 1085, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.031. CERTIFICATION OF RESULTS. If the commissioner finds that two-thirds or more of those voting in the election voted in favor of the referendum proposition or that those voting in favor of the proposition produced at least 50 percent of the volume of production of the commodity during the relevant production period, the commissioner shall publicly certify the adoption of the referendum proposition and issue certificates of election to those persons elected to the board. Otherwise, the commissioner shall publicly certify that the referendum proposition was defeated.

Acts 1981, 67th Leg., p. 1085, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.032. SUBSEQUENT BOARD ELECTIONS. A commodity producers board shall conduct biennial elections for the purpose of electing members to the board. The board shall give notice and hold the

election in accordance with the applicable provisions of this subchapter relating to the initial election and, to the extent necessary, in accordance with the rules of the commissioner.

Acts 1981, 67th Leg., p. 1085, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.033. ELECTION OF BOARD FROM DISTRICTS. (a) In accordance with the rules of the commissioner, a certified organization or established board may provide for election of all or any number of the members of the board from districts. Each plan must be submitted to the commissioner for approval.

(b) In order to represent a district on the board, a person must reside within that district. Only voters residing in a district may vote for candidates for the position representing the district.

(c) With the approval of the commissioner, a district representation plan may be modified.

Acts 1981, 67th Leg., p. 1085, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.034. ELECTIONS TO ADD NEW TERRITORY. (a) Producers of an agricultural commodity in an area not within the jurisdiction of a board for that commodity may petition the commissioner to authorize a referendum within an area specified in the petition on the issue of whether or not the area is to be included within the jurisdiction of that board. The petition must be submitted to the commissioner at least 105 days before the date of the election at which the referendum is to be conducted.

(b) If the commissioner determines that in the area described there exists among the producers of the commodity an interest in becoming subject to the jurisdiction of the board that is substantial enough to justify a referendum, the commissioner may transmit the petition to the board with an order authorizing the board in its discretion to conduct the election at its own expense. The petition and order must be transmitted to the board at least 75 days before the date of the election.

(c) The referendum shall be held on the date of the biennial election of board members. The board shall give public notice of:

(1) the date of the election;

(2) the amount and basis of the assessment collected by the

board;

(3) a description of the manner in which the assessment is collected and the proceeds administered and used; and

(4) any other proposition the board proposes to include on the ballot as authorized or required by this chapter.

(d) The notice under Subsection (c) of this section shall be published in one or more newspapers published and distributed, or generally circulated, within the boundaries described in the petition. The notice shall be published at least 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 board shall give direct written notice to each county agent in any county within the described boundaries.

(e) A person is qualified to vote in the referendum if he or she is or, for at least one production period during the three years preceding the date of the referendum, has been a producer of the commodity whose production occurs within the area described in the petition.

(f) A producer who is qualified to vote in the referendum is eligible to be a member of or a candidate for membership on the board. If the board is elected from districts, a producer within the described boundaries may be a candidate only for at-large positions on the board, if any. In order to qualify as a candidate, the producer must comply with Section 41.025 of this code, except that the application shall be filed with the board and may not be filed before the first publication of notice under Subsection (d) of this section.

(g) In the area described in the petition, the ballot shall be prepared and distributed and the election shall be conducted in accordance with the rules of the commissioner under Section 41.022 of this code.

(h) Except as otherwise provided in this subsection, voters qualified to vote in the referendum are entitled to vote for candidates for membership on the board and for any other proposition printed on the ballot for the regular election. If board members are elected from districts, voters in the area described in the petition may vote only for at-large positions, if any.

(i) The ballots cast in the area described in the petition shall be canvassed, and the returns reported, separately from the ballots cast in other areas. On those returns, the board shall

perform the functions of the commissioner described in Section 41.030 of this code, except that the board shall certify whether the referendum proposition carried or was defeated in the area described in the petition. If the referendum proposition is defeated, the ballots cast in the area described in the petition may not be counted for any other purpose. If the proposition carries, the returns shall be included in determining the election of board members and the outcome of other propositions. The area described in the petition becomes subject to the jurisdiction of the board on the day following the date that the result is certified.

Acts 1981, 67th Leg., p. 1085, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. ORGANIZATION, POWERS, AND DUTIES OF BOARDS

Sec. 41.051. BOARD ESTABLISHED. If the commissioner certifies adoption of a referendum proposition under Section 41.031 of this code, the board is established and has the powers and duties prescribed by this chapter.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.052. STATE AGENCY. (a) Each board is a state agency for purposes of indemnification and is exempt from taxation in the same manner and to the same extent as are other agencies of the state.

(b) Each board is a governmental unit for purposes of Section 101.001, Civil Practice and Remedies Code, and is a governmental body for purposes of Chapters 551 and 552, Government Code.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 52, Sec. 7, eff. May 7, 2001.

Sec. 41.053. ORGANIZATIONAL MEETING; TERMS OF OFFICE. (a) On receiving certificates of election from the commissioner, the members of the commodity producers board shall meet and organize.

(b) Members of the initial board shall draw lots so that one-third, or as near one-third as possible, of the members shall hold office for two years, one-third, or as near one-third as possible,

for four years, and one-third, or as near one-third as possible, for six years. Thereafter, members of the board serve for terms of six years.

(c) Each member holds office until a successor is elected and has qualified.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 7.02, eff. Sept. 1, 2003.

Sec. 41.054. OFFICERS; BOND. (a) The board shall elect from its number a chairman, a secretary-treasurer, and other officers that it considers necessary.

(b) The secretary-treasurer shall execute a corporate surety bond in an amount required by the board. The bond shall be conditioned on the secretary-treasurer faithfully accounting for all money that comes into the custody of the officer. The bond shall be filed with the commissioner.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.055. VACANCY. The board shall fill any vacancy on the board by appointment for the unexpired term.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.056. MAJORITY VOTE REQUIREMENT. A majority vote of all members present is necessary for an action of the board to be valid.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.057. COMPENSATION. Members of the board serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.058. POWERS AND DUTIES. (a) The board may employ necessary personnel, fix the amount and manner of their compensation, and incur other expenses that are necessary and proper to enable the board to effectively carry out the purposes of this chapter.

(b) The board may adopt rules consistent with the purposes of this chapter.

(c) The board shall keep minutes of its meetings and other books and records that clearly reflect all acts and transactions of the board. The board shall open its records to examination by any participating producer during regular business hours.

(d) The board shall set the rate of the assessment. The rate may not exceed the maximum established in the election authorizing the assessment or a subsequent election establishing a maximum rate.

(e) The board may act separately or in cooperation with any person in developing, carrying out, and participating in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of the commodity on which the assessment is levied.

Acts 1981, 67th Leg., p. 1087, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 2, eff. September 1, 2011.

Sec. 41.059. BUDGET; ANNUAL REPORT; AUDITS. (a) The board shall file with the commissioner a proposed budget and may expend funds only after the commissioner has approved the budget. If after thorough review the commissioner disapproves the proposed budget, the commissioner shall return the proposed budget to the submitting board not later than the 45th day after the date on which the proposed budget is submitted with a statement of reasons for disapproval.

(b) Accounts of the board are subject to audit by the state auditor.

(c) Within 30 days following the end of each fiscal year of the board, the board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the board during the previous fiscal year.

Acts 1981, 67th Leg., p. 1088, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, Sec. 35, eff. Sept. 1, 1989.

Sec. 41.060. DEPOSITORY BANK; EXPENDITURE OF FUNDS. (a) The secretary-treasurer shall deposit all money received by the board under this chapter, including assessments, donations from persons, and grants from governmental agencies, in a bank selected by the board.

(b) Money received by the board may be expended for any purpose under this chapter.

(c) Funds assessed and collected under this chapter may not be expended for use directly or indirectly to promote or oppose the election of any candidate for public office or to influence legislation.

Acts 1981, 67th Leg., p. 1088, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. ASSESSMENTS

Sec. 41.081. COLLECTION OF ASSESSMENT. (a) The processor at a commodity process point determined by the board shall collect the assessment. Except as provided by Subsection (b) of this section, the processor at that point shall collect the assessment by deducting the appropriate amount from the purchase price of the commodity or from any funds advanced for that purpose.

(b) If the producer and processor are the same legal entity, or if the producer retains ownership after processing, the processor shall collect the assessment directly from the producer at the time of processing.

(c) The secretary-treasurer of the board, by registered or certified mail, shall notify each processor of the duty to collect the assessment, the manner in which the assessment is to be collected, and the date on or after which the processor is to begin collecting the assessment.

(d) The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction. The processor shall furnish a copy of the document to the producer.

(e) Unless otherwise provided by the original referendum, no

later than the 10th day of each month the processor shall remit the amount collected during the previous month to the secretary-treasurer of the board.

Acts 1981, 67th Leg., p. 1088, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.082. PRODUCER EXEMPTION. (a) A producer may exempt his or her product sales from assessment by filing a signed request for exemption with the processor at the time of each sale unless the notice of referendum to authorize the assessment or to add new territory stated that such an exemption would not be allowed or unless any board established prior to September 1, 1983, adopts a rule denying such an exemption. The processor shall include copies of the exemption request with the remittance of collected assessments to the secretary-treasurer.

(b) The commissioner shall prescribe the form of the request for exemption. The board shall furnish the prescribed form to each processor within the board's jurisdiction.

Acts 1981, 67th Leg., p. 1088, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 3185, ch. 545, Sec. 3, eff. Nov. 8, 1983.

Sec. 41.083. PRODUCER REFUNDS. (a) A producer who has paid an assessment may obtain a refund of the amount paid by filing an application for refund with the secretary-treasurer within 60 days after the date of payment. The application must be in writing, on a form prescribed by the board for that purpose, and accompanied by proof of payment of the assessment.

(b) The secretary-treasurer shall pay the refund to the producer before the 11th day of the month following the month in which the application for refund and proof of payment are received.

Acts 1981, 67th Leg., p. 1089, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.084. INCREASE OF ASSESSMENT. At any biennial board election, the board may submit to the voters a proposition to increase the maximum rate of assessment. The proposition is approved

and the new maximum rate is in effect if two-thirds or more of those voting vote in favor of the proposition or if those voting in favor of the proposition produced at least 50 percent of the volume of production of the commodity during the relevant production period.

Acts 1981, 67th Leg., p. 1089, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 41.085. DISCONTINUANCE OF ASSESSMENT. (a) If 10 percent or more of the producers participating in the program present to the secretary-treasurer a petition calling for a referendum of the qualified voters on the proposition of discontinuing the assessment, the board shall conduct a referendum for that purpose.

(b) The board shall give notice of the referendum, the referendum shall be conducted, and the results shall be declared in the manner provided by law for the original referendum and election, with any necessary exceptions provided by rule of the commissioner.

(c) The board shall conduct the referendum within 90 days of the date of filing of the petition.

(d) Approval of the proposition is by majority vote of those voting. If the proposition is approved, the assessment is abolished.

Acts 1981, 67th Leg., p. 1089, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. REMEDIES AND PENALTIES

Sec. 41.101. FAILURE TO REMIT ASSESSMENT. (a) The board may investigate conditions that relate to the prompt remittance of the assessment by any producer or processor. If the board has probable cause to believe that a person has failed to collect an assessment or failed to remit to the board an assessment as required by this chapter, the board may:

(1) independently institute proceedings for recovery of the amount due to the board or for injunctive or other appropriate relief;

(2) request the attorney general, or the county or district attorney having jurisdiction, or both, to institute proceedings in the board's behalf; or

(3) forward to the department for action under Section 41.1011 a complaint and any original evidence or other information establishing probable cause.

(b) Suit under this section may be brought in Travis County or a county in which the person who is alleged to have failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

(c) The remedies provided by this section are cumulative of other remedies provided by law.

Acts 1981, 67th Leg., p. 1089, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 374, Sec. 2, eff. May 25, 2001.

Sec. 41.1011. ACTION BY DEPARTMENT. (a) On receipt of a complaint from the board under Section 41.101(a)(3), the department may investigate, audit, and inspect the records of the person who is the subject of the complaint, provided that any audit or inspection must take place during normal business hours.

(b) On determination by the department that a person has failed to collect an assessment or failed to remit to the board an assessment collected from a producer or processor, the department may:

(1) request a hearing under Section 12.032 to determine the amount of payment due to the board, including interest at an annual rate of 10 percent, and issue an order that the person pay the required amount to the board;

(2) impose an appropriate administrative penalty; and

(3) request the attorney general or a county or district attorney having jurisdiction to bring an action for appropriate civil or criminal penalties or injunctive relief.

(c) The attorney general may bring a civil action to enforce an order of the department and collect any amounts owed under the order, including costs and fees under Subsection (d).

(d) On prevailing in an action commenced by the department through the attorney general or a county or district attorney under this section, the department and the attorney general or county or district attorney are each entitled to recover, in addition to other relief available:

(1) investigation costs and fees;

(2) reasonable attorney's fees; and

(3) court costs.

(e) Suit under this section may be brought in Travis County or

a county in which the person who failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

(f) An assessment and any interest collected under this section shall be deposited in the account of the board that levied the assessment.

(g) The remedies provided by this section are cumulative of other remedies provided by law.

Added by Acts 2001, 77th Leg., ch. 374, Sec. 3, eff. May 25, 2001.

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, H, or I 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.

Acts 1981, 67th Leg., p. 1090, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 1, eff. May 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 163 (H.B. 1934), Sec. 1, eff. September 1, 2015.

Sec. 41.103. GENERAL PENALTY. (a) A person commits an offense if the person violates any provision of Subchapters B-E of this chapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1090, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 36, eff. Sept. 1, 1989.

Sec. 41.104. USE OF FUNDS FOR POLITICAL ACTIVITY. (a) A member of a board commits an offense if the member:

(1) wilfully spends or assists in spending money in

violation of Section 41.060(c) of this code; or

(2) without causing or attempting to cause his or her dissent to be entered in the records or minutes of the board, participates in a meeting or session of the board in which money is authorized or directed to be expended in violation of Section 41.060(c) of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000.

Acts 1981, 67th Leg., p. 1090, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. SUSPENSION OF ACTIVITIES OF CERTAIN BOARDS

Sec. 41.125. INACTIVE STATUS. (a) The Texas Mohair Producers Board and the Texas Pork Producers Board are inactive as provided by Section 41.126 of this code until reactivated under Section 41.127 of this code. Neither board is abolished, and a referendum election under Subchapter C of this chapter is not required to reactivate either board.

(b) The Southern Rolling Plains Cotton Producers Board and the Texas Soybean Producers Board are inactive as provided by Section 41.126 of this code until reactivated under Section 41.127 of this code. Neither board is abolished, and a referendum election under Subchapter C of this chapter is not required to reactivate either board.

Added by Acts 1989, 71st Leg., ch. 94, Sec. 1, eff. May 15, 1989. Amended by Acts 1993, 73rd Leg., ch. 93, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 243, Sec. 1, eff. May 23, 1997.

Sec. 41.126. POWERS AND DUTIES. (a) A board listed in Subsection (a) of Section 41.125 of this code may not exercise any powers under this chapter after the end of the board's 1989 fiscal year other than preparing and submitting the fiscal year 1989 report required by Subsection (c) of Section 41.059 of this code.

(b) The Southern Rolling Plains Cotton Producers Board may not exercise any powers under this chapter after the end of the board's 1993 fiscal year other than preparing and submitting the fiscal year 1993 report required by Subsection (c) of Section 41.059 of this code.

(c) The Texas Soybean Producers Board may not exercise any powers under this chapter after the end of the board's 1997 fiscal year other than preparing and submitting the fiscal year 1997 report required by Subsection (c) of Section 41.059 of this code.

(d) After submitting the report required by Subsection (a), (b), or (c) of this section, the board may not conduct biennial elections under Section 41.032 of this code or submit the report required by Subsection (c) of Section 41.059 of this code.

(e) The board may collect the assessment only during the fiscal year for which a report is required by Subsection (a), (b), or (c) of this section.

(f) The board shall disburse funds as provided in the budget of the fiscal year for which a report is required by Subsection (a), (b), or (c) of this section. Money of the board remaining on the first day after that fiscal year shall remain in the board's depository bank until the board is reactivated or the department by rule provides for the disposition of the funds.

(g) Members of the board serving on the date the final report is submitted continue to serve until their successors are elected and qualify for office.

Added by Acts 1989, 71st Leg., ch. 94, Sec. 1, eff. May 15, 1989. Amended by Acts 1993, 73rd Leg., ch. 93, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 243, Sec. 2, eff. May 23, 1997.

Sec. 41.127. REACTIVATION. (a) The commissioner shall order the reactivation of a board listed in Subsection (a) or (b) of Section 41.125 of this code if:

(1) a majority of the members of the board petition the commissioner to reactivate the board and the commissioner determines that reactivation of the board is in the best interest of the producers subject to assessment by the board; or

(2) for a board listed in Subsection (a) of Section 41.125 of this code, a federal assessment is not assessed on mohair or pork, as applicable.

(b) If a board is reactivated, the board will consist of:

(1) members of the board whose terms have not expired; and

(2) persons elected at an election held as provided by Subsection (c) of this section.

(c) An election shall be held after reactivation to fill any vacancies on the board. The election shall be held in the manner provided for the biennial election of members by Section 41.032 of this code. Persons elected shall draw lots to determine the length of each person's term.

Added by Acts 1989, 71st Leg., ch. 94, Sec. 1, eff. May 15, 1989.
Amended by Acts 1993, 73rd Leg., ch. 93, Sec. 3, eff. Aug. 30, 1993.

SUBCHAPTER H. TEXAS BEEF MARKETING, EDUCATION, RESEARCH, AND PROMOTION

Sec. 41.151. DEFINITIONS. In this subchapter:

(1) "Beef products" means products produced in whole or in part from beef. The term does not include milk or products made from milk.

(2) "Council" means the Beef Promotion and Research Council of Texas.

(3) "Producer" means a person who owns or acquires ownership of cattle, except that a person is not a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.08, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 998 (H.B. 2312), Sec. 1, eff. June 14, 2013.

Sec. 41.152. DECLARATION OF POLICY. (a) The legislature intends that the promotion, marketing, research, and educational efforts regarding beef and beef products under this subchapter use existing cattle industry infrastructure to the extent possible.

(b) The council shall be the certified organization to plan, implement, and operate research, education, promotion, and marketing programs under this subchapter. If the council establishes a state beef check off program under Section 41.1571, the council shall administer that program.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.09, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 998 (H.B. 2312), Sec. 2, eff. June 14, 2013.

Sec. 41.153. ADMINISTRATIVE COSTS. The department may recover costs for administration of this subchapter.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.

Sec. 41.154. ANNUAL REPORT. The council shall deliver to the commissioner and the appropriate oversight committee in the senate and house of representatives an annual report giving details of its efforts to carry out the purposes of this subchapter.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.

Sec. 41.155. CONFLICT WITH GENERAL COMMODITY LAW PROVISIONS. To the extent that the provisions of this subchapter conflict with other provisions of this chapter, the provisions of this subchapter prevail.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.

Sec. 41.156. COUNCIL MEMBERS. (a) A member of the council must be:

(1) nominated by the entity qualified to collect the proceeds of and administer the beef check off program established by federal law in this state or, in the entity's absence, the certified organizations that composed the entity; and

(2) appointed by the commissioner.

(b) A council member serves a one-year term or until his or her successor is appointed. A council member may serve not more than six consecutive one-year terms, except that a council member who is elected to serve as an officer during the member's sixth consecutive one-year term may serve as chairman or past chairman for not more than two additional consecutive one-year terms.

(c) The commissioner shall fill a vacancy on the council by appointment for the unexpired term from nominations received in accordance with Subsection (a).

(d) A council member is not a state officer for purposes of Section 572.021, Government Code, solely because of the member's service on the council.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.10, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 998 (H.B. 2312), Sec. 3, eff. June 14, 2013.

Sec. 41.1565. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Notwithstanding Chapter 551, Government Code, the council or a committee established by the council may hold an open or closed meeting by telephone conference call if the convening at one location of a quorum of the council or committee is inconvenient for any member of the council or committee.

(b) The meeting is subject to the notice requirements applicable to other meetings.

(c) The notice of the meeting must specify as the location of the meeting the location where meetings of the council or committee, as applicable, are usually held.

(d) Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and the audio shall be recorded. The audio recording shall be made available to the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 163 (H.B. 1934), Sec. 2, eff. September 1, 2015.

Sec. 41.157. GENERAL POWERS OF COUNCIL. The council may take action or exercise other authority as necessary to execute any act authorized by this chapter or the Texas Nonprofit Corporation Law as described by Section 1.008, Business Organizations Code. The council may contract or enter into agreements with the entity qualified to collect the proceeds of and administer the beef check off program established by federal law in this state.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.11, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 998 (H.B. 2312), Sec. 4, eff. June 14, 2013.

Sec. 41.1571. STATE BEEF CHECK OFF PROGRAM. The council may establish and operate a state beef check off program that is separate from the beef check off program established by federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 998 (H.B. 2312), Sec. 5, eff. June 14, 2013.

Sec. 41.158. DONATIONS. The council may accept gifts, donations, and grants of money, including appropriated funds, from state government, federal government, local governments, private corporations, or other persons, to be used for the purposes of this subchapter.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.

Sec. 41.159. BORROWING. The council may borrow money on approval of the commissioner.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan.

11, 2004.

Sec. 41.160. ASSESSMENTS; APPLICABILITY OF OTHER LAW. (a) The commissioner, on the recommendation of the council, shall propose the maximum assessment in a referendum under Section 41.162.

(b) If an assessment referendum is approved, the council shall recommend to the commissioner an assessment amount not greater than the maximum amount approved in the referendum. After the assessment is approved by the commissioner, the council shall collect the assessment.

(c) An assessment levied on producers shall be applied by the council to efforts relating to the marketing, education, research, and promotion of beef and beef products in Texas, the United States, and international markets, including administrative costs of conducting an assessment referendum.

(d) Assessments collected by the council are not state funds and are not required to be deposited in the state treasury.

(e) Section 41.083 applies to an assessment collected by the council under this subchapter. Section 41.082 does not apply to an assessment collected under this subchapter. The commissioner, on the council's recommendation, may exempt from the assessment certain producers who are exempt under federal law.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.12, eff. September 1, 2009.

Sec. 41.161. FINANCIAL OVERSIGHT. (a) The commissioner shall annually review and approve the council's operating budget for the funds collected under this subchapter.

(b) The commissioner and the state auditor at any time may inspect the financial records of the council.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.13, eff.

September 1, 2009.

Sec. 41.162. CONDUCT OF REFERENDUM; BALLOTING. (a) On the recommendation of the council, the commissioner shall conduct a referendum authorized under this subchapter.

(b) Only a producer who has owned cattle in the last 12 months before the date of the referendum is eligible to vote in the referendum.

(c) An eligible producer may vote only once in a referendum.

(d) Each producer's vote is entitled to equal weight regardless of the producer's volume of production.

(e) A referendum is approved if a simple majority of votes are cast in favor of the referendum.

(f) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Government Code.

(g) The council shall pay all expenses incurred in conducting a referendum with funds collected from the beef industry.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.14, eff. September 1, 2009.

Sec. 41.163. RULES. The commissioner may adopt rules as necessary to implement this subchapter, including rules relating to:

(1) the auditing of the financial records of the council;
(2) fidelity bonds required for certain council employees;
(3) conflicts of interest;
(4) penalties; and
(5) a statewide referendum under Section 41.156.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.

Sec. 41.164. PENALTIES. (a) A person who violates this subchapter or a rule adopted under this subchapter commits an

offense.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 25.03, eff. Jan. 11, 2004.

SUBCHAPTER I. TEXAS GRAIN PRODUCER INDEMNITY BOARD

Sec. 41.201. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Grain Producer Indemnity Board.

(2) "Claim initiation date" means the earliest date on which a grain buyer:

(A) files for federal bankruptcy protection;

(B) becomes the subject of an involuntary bankruptcy proceeding;

(C) is found to be insolvent by a court or a state or federal licensing agency;

(D) is ordered by a court having jurisdiction to pay a judgment to a grain producer; or

(E) loses its public warehouse license under:

(i) the United States Warehouse Act (7 U.S.C. Section 241 et seq.); or

(ii) Chapter 14.

(3) "Financial failure" means an event described by Subdivision (2)(A), (B), (C), (D), or (E).

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

(4) "Grain" means corn, soybeans, wheat, and grain sorghum.

(5) "Grain buyer" means a person who buys grain from a grain producer or stores unsold grain for a grain producer. The term includes:

(A) a purchaser;

(B) a warehouseman;

(C) a processor; or

(D) a commercial handler.

(6) "Grain producer" means a person, including the owner of a farm on which grain is produced, or the owner's tenant or sharecropper, engaged in the business of producing grain or causing grain to be produced for commercial purposes.

(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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 2, eff. May 19, 2015.

Sec. 41.202. DECLARATION OF POLICY. (a) The legislature intends for the board to indemnify grain producers for economic hardships in the event that a grain buyer is unable to pay the grain producer for the grain producer's grain.

(b) The board shall be the certified organization to indemnify grain producers under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

Sec. 41.203. CONFLICT WITH GENERAL COMMODITY LAW PROVISIONS. To the extent that this subchapter conflicts with other provisions of this chapter, this subchapter prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

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

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

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

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

the board's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 3, eff. May 19, 2015.

Sec. 41.204. BOARD. (a) The board is composed of:

(1) one representative of each of the following organizations or their successor organizations who is recommended to the commissioner by the board of directors of the organization and appointed by the commissioner:

(A) the Corn Producers Association of Texas;

(B) the Texas Wheat Producers Association;

(C) the Texas Grain Sorghum Association;

(D) the Texas Soybean Association; and

(E) the Texas Farm Bureau; and

(2) the following members, appointed by the commissioner:

(A) one representative of the Texas Agricultural Cooperative Council or its successor organization;

(B) one representative of the Texas Grain & Feed Association or its successor organization;

(C) one representative of the non-warehouse grain-buying industry; and

(D) one member with expertise in production agriculture financing.

(b) Members of the board serve staggered terms of two years each and may serve for a maximum of three terms.

(c) The directors described by Subsection (a)(1) shall select a chair and vice chair from among those directors.

(d) A vacancy on the board, including a vacancy resulting from the failure of a board member to fulfill the board member's responsibilities, shall be filled in the manner provided by Subsection (a). If a vacancy on the board is the result of an organization described by Subsection (a) dissolving or failing to fulfill its responsibilities under this subchapter, the commissioner may fill the vacancy by appointing an individual from the sector or industry represented by the organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

Sec. 41.205. POWERS AND DUTIES OF BOARD. (a) The board shall meet at least quarterly to:

(1) review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board;

(2) coordinate all matters relating to the board, including the board's budget under Section 41.059, and the revenues necessary to accomplish the purposes of the board;

(3) establish, maintain, or adjust the rate of assessments collected under Section 41.206; and

(4) determine the most effective use of the board's budget to provide protection to grain producers.

(b) Notwithstanding Chapter 551, Government Code, the board may hold an open or closed meeting by telephone conference call or videoconference if:

(1) immediate action or a quarterly meeting is required; and

(2) the location at which a quorum of the board convenes is inconvenient for any member of the board.

(c) A meeting under Subsection (b) is subject to the notice requirements of Chapter 551, Government Code.

(d) Notice of a meeting under Subsection (b) must specify that the location at which meetings of the board are usually held is the location of the meeting.

(e) Each part of an open meeting under Subsection (b) shall be conducted in a manner that is audible to the public at the location specified in the notice of the meeting. The board shall ensure that each open meeting is tape recorded and that the tape recording is made available to the public after the meeting.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 4, eff. May 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 5, eff. May 19, 2015.

Sec. 41.206. COLLECTION OF ASSESSMENT. (a) Except as provided by this subsection, a grain buyer shall collect assessments in the manner prescribed for processors under Section 41.081. The assessment shall be collected at the first point of sale. Section 41.081(b) does not apply to the collection of assessments under this section.

(b) Except as provided by Subsection (c), not later than the 10th day of each quarter of the calendar year, the grain buyer shall remit the amount collected during the preceding quarter to the secretary-treasurer of the board for deposit with the bank selected by the board under Section 41.060.

(c) The grain buyer may retain a portion of the assessment in an amount determined by the board to cover the grain buyer's administrative costs in collecting the assessment.

(d) The board shall notify the grain producer of the manner by which the grain producer may initiate a claim under Section 41.208. The notice may be provided in a manner determined by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 6, eff. May 19, 2015.

Sec. 41.207. ASSESSMENTS; APPLICABILITY OF OTHER LAW. (a) An assessment levied on grain producers shall be applied by the board to efforts relating to the indemnification of grain producers in this state, including administrative costs of conducting an assessment referendum.

(b) Assessments collected by the board are not state funds and are not required to be deposited in the state treasury.

(c) Sections 41.082 and 41.083 do not apply to an assessment collected under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

Sec. 41.208. INITIATION OF CLAIM. (a) A grain producer who has delivered grain to a grain buyer may initiate a claim with the

board as provided by board rule if:

(1) the grain buyer has suffered a financial failure and:

(A) has failed to pay to a grain producer an amount owed to the grain producer; or

(B) is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment; and

(2) the grain producer provides to the board:

(A) written documentation showing that the grain was delivered to the grain buyer; and

(B) a copy of the written contract for purchase of the grain signed by the grain producer and the grain buyer and showing:

(i) the agreed price for the grain;

(ii) the amount of grain purchased; and

(iii) any other relevant term required by the board to establish facts related to the claim.

(b) A claim under this section must:

(1) be initiated:

(A) not more than 60 days after the applicable claim initiation date; or

(B) before a date determined by the board to be reasonable, if the board determines such a date; and

(2) be for a loss of grain delivered to the grain buyer not more than one year before the applicable claim initiation date.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

Sec. 41.209. PAYMENT OF CLAIM. (a) After a claim is initiated by a grain producer under Section 41.208, the board may take any action necessary to:

(1) investigate the grain producer's claim; and

(2) determine the amount due to the grain producer within the limit prescribed by Subsection (b) and subject to Subsection (f).

(b) In determining the amount due to a grain producer under Subsection (a) for a loss of grain, the board may award the grain producer 85 percent of:

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

(2) the contract price of the grain, if the grain has been

sold.

(c) The board shall make a determination under Subsection (a) within a reasonable period of time as established by the board.

(d) Except as provided by Subsection (e), the board shall, not later than the 30th day after the date the board makes a determination under Subsection (a):

(1) pay to the grain producer the amount determined under Subsection (a); or

(2) notify the grain producer that the grain producer's claim is denied.

(e) If claims filed with the board that are due to grain producers under this section exceed the amount of the board's budget allocated for the payment of claims, the board shall pay each grain producer on a prorated basis without regard to the order in which claims are made or approved. The board shall pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

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

(1) if the grain producer has failed to pay assessments under Section 41.206;

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

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

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

(A) payments made by the board;

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

(C) payments ordered by a bankruptcy court; or

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

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

(g) Notwithstanding Subsection (f)(3), if the board determines that the documentation submitted in support of a grain producer's claim is incomplete, the board shall give the grain producer an opportunity to provide complete documentation.

(h) The board may adopt rules specifying the circumstances under which a claim may be denied in whole or in part under Subsection (f).

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 7, eff. May 19, 2015.

Sec. 41.210. REIMBURSEMENT OF BOARD BY GRAIN BUYER; SUBROGATION OF RIGHTS; REINSURANCE. (a) If the board pays a claim against a grain buyer, the board is subrogated to the extent of the amount paid to a grain producer by the board to all rights of the grain producer against the grain buyer and any other entity from which the grain producer is entitled to a payment for the loss giving rise to the grain producer's claim under this subchapter.

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

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 8, eff. May 19, 2015.

Sec. 41.211. RULES. Except as provided by Section 41.212, the board may adopt rules as necessary to implement this subchapter, including rules relating to:

(1) notice and collection of assessments;
(2) the orderly distribution of refunds;
(3) the management of the board's budget;
(4) the use of insurance and reinsurance products;

(5) administration of the board's duties;

(6) the statewide referendum conducted under Section 41.212;

(7) the selection of agents, designees, or devices to carry out the intent of the board; and

(8) guidelines for industry practices that do or do not qualify for indemnification by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 9, eff. May 19, 2015.

Sec. 41.212. REFERENDUM; BALLOTING. (a) The commissioner shall conduct a referendum of grain producers to determine the maximum amount that may be assessed to a grain producer under Section 41.206.

(b) Only a grain producer who has sold grain to a grain buyer in the 36 months preceding the date of the referendum is eligible to vote in the referendum.

(c) An eligible grain producer may vote only once in a referendum.

(d) Each grain producer's vote is entitled to equal weight regardless of the grain producer's volume of production.

(e) A referendum is approved if a majority of votes cast are in favor of the referendum.

(f) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Government Code.

(g) The board shall locate private sources, including the organizations described by Section 41.204(a)(1), to pay all expenses incurred in conducting a referendum.

(h) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 10, eff. May

19, 2015.

Sec. 41.213. NOTICE OF REFERENDUM. (a) The commissioner shall give public notice of:

(1) the date, hours, and polling places for voting in the referendum conducted under Section 41.212;

(2) the estimated amount of the assessment proposed to be collected, as determined by the board, and the basis for which the assessment will be collected; and

(3) a description of the manner in which the assessment is to be collected and the proceeds administered and used.

(b) The commissioner shall publish the notice under Subsection (a) in one or more statewide or regional newspapers that provide reasonable notice throughout the state. The notice shall be published at least 90 days before the date of the referendum. In addition, at least 90 days before the date of the referendum the commissioner shall give direct written notice to the county agent in each county of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

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

(b) As a part of the annual budget proposal procedure described by Section 41.059, the board shall review the budget for the next year and the board's current financial status. Based on that review, the board shall determine whether funds are available in excess of the minimum fund balance to issue refunds to grain producers who paid an assessment under Section 41.206.

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

Added by Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 11, eff. May 19, 2015.

Sec. 41.215. ANNUAL REPORT. (a) The board shall submit a report to the commissioner annually that contains a summary of the board's activities and a review of the board's effectiveness.

(b) The board shall post the report online on the board's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 991 (H.B. 1840), Sec. 3, eff. September 1, 2011.

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

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

(2) outlining available remedial actions.

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 33 (S.B. 1099), Sec. 12, eff. May 19, 2015.

CHAPTER 42. FOOD AND FIBERS RESEARCH GRANT PROGRAM

Sec. 42.001. PURPOSE. The food and fibers research grant program is a program in the department to assist the fibers and oilseeds industries in this state by identifying and obtaining available funding from public and private entities, including federal agencies and state agencies in this and other states, for the support of applied research related to fibers and oilseeds.

Acts 1981, 67th Leg., p. 1090, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 38, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 245 (H.B. 373), Sec. 2, eff. May 30,

2005.

Sec. 42.0015. DEFINITIONS. In this chapter:

(1) "Council" means the Food and Fibers Research Council.

(2) "Program" means the food and fibers research grant program.

Added by Acts 2005, 79th Leg., Ch. 245 (H.B. 373), Sec. 3, eff. May 30, 2005.

Sec. 42.002. ORGANIZATION. The Food and Fibers Research Council is composed of the following members appointed by the commissioner:

(1) the commissioner or the commissioner's designee;

(2) two representatives of the Texas Cotton Producers Association;

(3) a representative of the Texas Cotton Association;

(4) a representative of the Texas Cotton Ginners Association;

(5) a representative of the Texas Independent Ginners Association;

(6) a representative of the Texas Agriculture Cooperative Council;

(7) a representative of the Mohair Council of America;

(8) a representative of the Texas Sheep and Goat Raisers Association;

(9) a Texas representative of the National Cottonseed Products Association;

(10) a representative of the peanut industry;

(11) a representative of the textile or fashion industry; and

(12) a representative of the food processing industry.

Acts 1981, 67th Leg., p. 1091, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 184, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 729, Sec. 11, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 38, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 2.03, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 37, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 245 (H.B. 373), Sec. 4, eff. May 30, 2005.

Acts 2007, 80th Leg., R.S., Ch. 884 (H.B. 2222), Sec. 1, eff. June 15, 2007.

Sec. 42.003. ADMINISTRATION. (a) Members of the council serve staggered six-year terms, with as near as possible to one-third of the members' terms expiring on February 1 of each odd-numbered year.

(b) The commissioner or the commissioner's designee serves as presiding officer of the council.

(c) The council shall meet at least once each year at a time designated by the presiding officer.

(d) Members of the council are not entitled to compensation for service on the council or reimbursement for travel expenses incurred by the member while conducting council business.

(e) The commissioner shall provide the council with necessary staff and resources to administer the program, as determined by the commissioner. The commissioner may also appoint or employ consultants or other agents as necessary for the business of the program.

(f) The commissioner may adopt rules necessary to administer this chapter.

Acts 1981, 67th Leg., p. 1091, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 38, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 37, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 245 (H.B. 373), Sec. 4, eff. May 30, 2005.

Sec. 42.004. POWERS AND DUTIES. (a) The council shall administer the program to provide funding for surveys, research, and investigations relating to the use of cotton fiber, cottonseed, oilseed products, other products of the cotton plant, wool, mohair, and other textile products.

(b) The department may contract with any state institution of higher education, state agency, or federal agricultural agency to

perform services for the council or for the use of the facilities of the agency.

(c) The awarding of program grant funds under this chapter is restricted to surveys, research, or investigations of cotton, cottonseed oil or other related oilseed products, wool, mohair, or other related textile products, unless otherwise specifically provided by the terms of the grant.

Acts 1981, 67th Leg., p. 1091, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 38, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 245 (H.B. 373), Sec. 4, eff. May 30, 2005.

Sec. 42.008. FINANCES. (a) The council and the department may solicit and accept, for the purposes of this chapter, gifts, donations, and grants from public and private sources, subject only to limitations contained in the gift, donation, or grant.

(b) Funds appropriated for the purposes of this chapter shall be expended at the direction of the council on claims approved by the council.

(c) The total amount of appropriations, exclusive of legislative appropriations of gifts from private sources, expended or encumbered by the council for purposes of research during a fiscal biennium may not exceed the amount of private gifts, donations, or grants to the council expended or encumbered for research during the same period.

(d) All money paid to the council under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 1989, 71st Leg., ch. 38, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 37, Sec. 3, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 245 (H.B. 373), Sec. 4, eff. May 30, 2005.

CHAPTER 43. COUNTY AND RAILWAY AGRICULTURAL EXPERIMENT FARMS AND STATIONS AND COUNTY DEMONSTRATION WORK

SUBCHAPTER A. COUNTY EXPERIMENT STATIONS

Sec. 43.001. DEFINITIONS. In this subchapter:

(1) "Director" means the director of the county experiment station.

(2) "Experiment station" means an agricultural experiment farm and station established under this subchapter.

Acts 1981, 67th Leg., p. 1093, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.002. ESTABLISHMENT. In accordance with this subchapter, the commissioners court of any county may establish and operate an experiment station in that county.

Acts 1981, 67th Leg., p. 1093, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.003. PETITION AND ELECTION ORDER. (a) If a number of qualified voters equal to 10 percent or more of the voters of the county who voted for governor in the last preceding gubernatorial election sign and present to the commissioners court a petition calling for establishment of a county experiment station under this subchapter, the commissioners court shall order an election on the proposition to be held on the next uniform election date that is at least 30 days after the date of the order.

(b) The order must be signed by the county judge. Copies of the order shall be posted at the door of the county courthouse and at all post offices in the county.

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.004. APPLICATION OF GENERAL ELECTION LAW. Except as otherwise provided by this subchapter, the election shall be conducted in accordance with general law relating to county elections.

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.005. ELECTION BALLOT. The ballot shall be printed to provide for voting for or against the proposition: "Establishment of

a county experiment station."

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.006. ELECTION RETURNS. The election officers shall certify to the commissioners court the number of votes cast for each proposition. If the majority of votes are cast in favor of establishing a county experiment station, the commissioners court shall declare the result and establish the experiment station in accordance with this subchapter.

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.007. ACQUISITION OF PROPERTY. (a) The commissioners court shall acquire an amount of land reasonably expected to support an experiment station that will produce revenue sufficient to maintain the station, as determined by the court. The land and necessary improvements may be acquired either through donation with good title of land and sufficient houses, residences, and barns, or through purchase under Subsection (b) of this section.

(b) If approved at an election conducted under Chapter 1251, Government Code, the commissioners court may issue bonds or warrants for the purpose of acquiring land and constructing buildings and improvements for an experiment station. The commissioners court may levy and collect a tax sufficient to pay the annual interest and to provide a sinking fund for the payment of principal on the bonds or warrants at maturity.

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.201, eff. Sept. 1, 2001.

Sec. 43.008. LOCATION. The experiment station shall be located at or as near the county seat as practicable. If no land is donated for the station within two miles of the county seat, the commissioners court may acquire land for the experiment station anywhere in the county, having due regard for the benefits to be derived from the station.

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.009. SUPERVISION. (a) The experiment station shall be operated in cooperation with, and in a manner similar to, state experiment stations. The director of the Texas Agricultural Experiment Station at College Station shall advise the county in the operation of the county's experiment station.

(b) The commissioners court shall appoint a director to supervise the operation of the experiment station and perform other duties prescribed by the court. In order to serve as director, a person must be a practical farmer and pass an examination relating to his or her general knowledge and education and to his or her knowledge of farming, stock raising, and other affairs incidental to successful farm life. The director of the Texas Agricultural Experiment Station or that director's designee shall prescribe and administer the examination.

(c) The director of a county experiment station is entitled to compensation of:

(1) a salary set by the commissioners court at not less than $75 a month; and

(2) a residence at the station, free of cost to the director and his or her family.

Acts 1981, 67th Leg., p. 1094, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.010. SUPPLIES AND IMPROVEMENTS. The commissioners court shall supply the experiment station with all necessary buildings, equipment, and materials and shall provide for needed improvements. In addition, the commissioners court shall supply stock, including work stock and cattle for service and breeding purposes, as necessary to promote the improvement of the farm and stock raising industry of the county.

Acts 1981, 67th Leg., p. 1095, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.011. LABOR. With the advice and approval of the commissioners court, the director may employ labor necessary to the operation of the experiment station. The county may not maintain

paupers on the experiment station or permit them to work on the station.

Acts 1981, 67th Leg., p. 1095, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.012. RECORDS. The director shall keep a complete and accurate record of:

(1) rainfall, temperature, winds, and general climatic conditions;

(2) the planting, cultivation, and marketing of all crops; and

(3) the management and observation of the station and the station's livestock.

Acts 1981, 67th Leg., p. 1095, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.013. ANNUAL REPORT. The director shall make an annual report to the commissioners court detailing the methods employed and results received on the county experiment station. With approval of the commissioners court, the county shall publish the report and mail it without cost to each person in the county engaged in farming. The report shall be mailed to others on request and to each experiment station in the state, the office of the commissioner of agriculture, and the United States Department of Agriculture.

Acts 1981, 67th Leg., p. 1095, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.014. PUBLIC INSPECTION AND INFORMATION. (a) The director shall at all reasonable times keep the experiment station open to public inspection.

(b) The director shall disseminate information to the public explaining the manner and methods of preparation, soil culture, cultivation, gathering, preservation, and marketing the products of the experiment station.

Acts 1981, 67th Leg., p. 1095, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.015. SALE OF PRODUCTS. (a) In accordance with the rules of the commissioners court, the director shall market and sell the products of the experiment station.

(b) The director shall remit proceeds from the sale of products to the county treasurer, who shall deposit the proceeds in the general fund of the county.

Acts 1981, 67th Leg., p. 1095, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.016. EXPENSES. On warrants drawn by the director and approved by the county judge, the county shall pay all expenses incurred in the operation of the experiment station, including the cost of labor and the director's salary, out of its general funds.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.017. LEASE OF STATION. (a) The commissioners court may not lease or allow to be leased an experiment station acquired by donation.

(b) The commissioners court may lease an experiment station acquired by purchase under Section 43.007(b) of this code to the state or to any agency of the federal government under terms agreed on by the court and the lessor.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. COUNTY DEMONSTRATION WORK

Sec. 43.031. DEMONSTRATION WORK. The commissioners court of any county may establish and conduct cooperative demonstration work in agriculture and home economics in cooperation with Texas A & M University.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.032. TERMS OF AGREEMENT WITH TEXAS A & M UNIVERSITY. The demonstration work shall be conducted on terms and conditions agreed to by the commissioners court and the agents of Texas A & M

University.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.033. EXPENSES. The commissioners court may employ any means and may appropriate and expend money as necessary to establish and conduct demonstration work under this subchapter.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. RAILWAY EXPERIMENT FARMS

Sec. 43.051. ESTABLISHMENT. For the purpose of aiding in the development of the agricultural and horticultural resources of Texas, any railway corporation operating in Texas may acquire, maintain, and operate or cause to be operated demonstration and experiment farms, orchards, and gardens.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.052. METHOD OF ACQUISITION. A railway corporation may acquire a farm, orchard, or garden by lease or purchase.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 43.053. NUMBER AND ACREAGE LIMITATIONS. (a) A farm, orchard, or garden established under this subchapter may not exceed 1,000 acres in size.

(b) A railway corporation may not own or control more than four farms, orchards, or gardens under this subchapter.

Acts 1981, 67th Leg., p. 1096, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 44. AGRICULTURAL DIVERSIFICATION AND MICROENTERPRISE SUPPORT PROGRAMS

Sec. 44.001. DEFINITIONS. In this chapter:

(1) "Eligible lending institution" means a financial

institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, and agrees to participate in the interest rate reduction program and to provide collateral equal to the amount of linked deposits placed with it.

(2) "Eligible borrower" means a person who proposes to use the proceeds of a loan under this chapter in a manner that will help accomplish the state's goal of fostering the creation and expansion of enterprises based on agriculture in this state.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 1.21(1), eff. September 1, 2009.

(4) "Linked deposit" means a time deposit governed by a written deposit agreement between the state and an eligible lending institution that provides:

(A) that the eligible lending institution pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate of a United States treasury bill or note of comparable maturity minus two percent; or

(ii) 1.5 percent;

(B) that the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) that the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a maximum rate that is the linked deposit rate plus a maximum of four percent.

(5) "Microenterprise" means a small business located in a rural area in which the owner operates the enterprise. Priority under this chapter shall be given to microenterprises which demonstrate significant potential for expansion that will provide jobs in economically depressed rural communities or to currently unemployed rural residents.

(6) "Rural area" means an area which is predominantly rural in character, being one which the board defines and declares to be a rural area.

(7) "Board" means the board of directors of the Texas Agricultural Finance Authority in Chapter 58.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1989, 71st Leg., ch. 1247, Sec. 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 644, Sec. 1, eff. Aug.

30, 1993; Acts 1993, 73rd Leg., ch. 1041, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 5.01, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1459, Sec. 1, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 26, Sec. 1, eff. May 2, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.01, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.21(1), eff. September 1, 2009.

Sec. 44.002. CREATION OF MICROENTERPRISE PROGRAMS. The board shall create a microenterprise support program to provide financial assistance to microenterprises in rural areas.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1989, 71st Leg., ch. 1247, Sec. 4, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 5.02, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1459, Sec. 2, eff. June 19, 1999.

Sec. 44.0045. MICROENTERPRISE SUPPORT PROGRAM LOANS. (a) The board shall administer a loan program supporting established and proposed microenterprises in rural areas by providing loans to expand, modernize, or otherwise improve established microenterprises and to begin operation of proposed microenterprises.

(b) An applicant applying on behalf of a proposed microenterprise may receive a loan of up to $25,000 to begin operation of the microenterprise.

(c) An applicant applying on behalf of an established microenterprise may receive a loan of up to $50,000 to expand, modernize, or otherwise improve an established operation.

(d) The board may reserve a portion of the total fund for use in cooperative loan programs established with the participation of other public or private lenders.

Added by Acts 1989, 71st Leg., ch. 1247, Sec. 6, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 5.04, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1459, Sec. 3, eff. June 19, 1999.

Sec. 44.007. INTEREST RATE REDUCTION PROGRAM. (a) The board shall establish an interest rate reduction program to foster the:

(1) creation and expansion of enterprises based on agriculture in this state; or

(2) development or expansion of businesses in rural areas of this state.

(c) The board shall promulgate rules for the loan portion of the interest rate reduction program.

(d) In order to participate in the interest rate reduction program, an eligible lending institution may solicit loan applications from eligible borrowers.

(b) The board shall approve or disapprove any and all applications under this chapter, provided that the board may delegate this authority to the commissioner.

(k) The board may adopt rules that create a procedure for determining priorities for loans granted under this chapter. Each rule adopted must state the policy objective of the rule.

(l) A lending institution is not ineligible to participate in the interest rate reduction program solely because a member of the board is also an officer, director, or employee of the lending institution, provided that a board member shall recuse himself or herself from any action taken by the board on an application involving a lending institution by which the board member is employed or for which the board member serves as an officer or director.

(e) After reviewing an application and determining that the applicant is eligible and creditworthy, the eligible lending institution shall send the application for a linked deposit loan to the administrator of the Texas Agricultural Finance Authority.

(f) The eligible lending institution shall certify the interest rate applicable to the specific eligible borrower and attach it to the application sent to the administrator of the Texas Agricultural Finance Authority.

(g) After reviewing each linked deposit loan application, the board or the commissioner shall recommend to the comptroller the acceptance or rejection of the application.

(h) After acceptance of the application, the comptroller shall place a linked deposit with the applicable eligible lending institution for the period the comptroller considers appropriate. The comptroller may not place a deposit for a period extending beyond the state fiscal biennium in which it is placed. Subject to the

limitation described by Section 44.010, the comptroller may place time deposits at an interest rate described by Section 44.001(4).

(i) Before the placing of a linked deposit, the eligible lending institution and the state, represented by the comptroller, shall enter into a written deposit agreement containing the conditions on which the linked deposit is made.

(j) If a lending institution holding linked deposits ceases to be either a state depository or a Farm Credit System institution headquartered in this state, the comptroller may withdraw the linked deposits.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1993, 73rd Leg., ch. 644, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 5.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 901, Sec. 1, eff. June 18, 1997; Acts 1997, 75th Leg., ch. 1010, Sec. 5.10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 2.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1459, Sec. 4, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 26, Sec. 2, eff. May 2, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.03, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 4, eff. June 14, 2013.

Sec. 44.008. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must loan money to eligible borrowers in accordance with the deposit agreement and this chapter. The eligible lending institution shall forward a compliance report to the board.

(b) The board shall monitor compliance with this chapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 5.08, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 5.10, eff.

Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 2.03, eff. Sept. 1, 1997.

Sec. 44.009. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an eligible borrower. A delay in payment or default on a loan by an eligible borrower does not affect the validity of the deposit agreement. Linked deposits are not an extension of the state's credit within the meaning of any state constitutional prohibition.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 5.10, eff. Sept. 1, 1997.

Sec. 44.010. LIMITATIONS IN PROGRAM. (a) At any one time, not more than $30 million may be placed in linked deposits under this chapter.

(b) The maximum amount of a loan under this chapter is $500,000.

(c) A loan granted pursuant to this chapter may be used for any agriculture-related operating expense, including the purchase or lease of land or fixed assets acquisition or improvement, as identified in the application.

(d) A loan granted pursuant to this chapter may be applied to existing debt as described in Section 44.007.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1993, 73rd Leg., ch. 644, Sec. 3, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 5.10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1459, Sec. 5, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 26, Sec. 3, eff. May 2, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.04, eff. September 1, 2009.

Sec. 44.012. MONEY FOR LOANS. The board may accept gifts and grants of money from the federal government, local governments, or

private corporations or other persons for use in making loans under the rural microenterprise support program. The legislature may appropriate money for loans under the program.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 1, Sec. 1, eff. Nov. 3, 1987. Amended by Acts 1989, 71st Leg., ch. 1247, Sec. 7, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 5.10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1459, Sec. 6, eff. June 19, 1999.

Sec. 44.013. RURAL MICROENTERPRISE DEVELOPMENT FUND. The rural microenterprise development fund is a fund in the comptroller's office. Money appropriated to the board for use in making loans under the rural microenterprise support program, other amounts received by the state for loans made under the program, and other money received by the board for the program and required by the board to be deposited in the fund shall be deposited to the credit of the fund. The fund shall operate as a revolving fund, the contents of which shall be applied and reapplied for the purposes of the rural microenterprise support program.

Added by Acts 1989, 71st Leg., ch. 1247, Sec. 8, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1459, Sec. 6, eff. June 19, 1999.

CHAPTER 44A. URBAN FARM MICROENTERPRISE SUPPORT PROGRAM

Sec. 44A.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Agricultural Finance Authority.

(2) "Microenterprise" means a small business in which the owner operates the enterprise.

(3) "Urban area" means an area inside the boundaries of a municipality with a population of 500,000 or more.

Added by Acts 2011, 82nd Leg., R.S., Ch. 558 (H.B. 2994), Sec. 1, eff. September 1, 2011.

Sec. 44A.002. CREATION OF URBAN FARM MICROENTERPRISE SUPPORT

PROGRAM. (a) The board shall create an urban farm microenterprise support program to provide financial assistance to microenterprises in urban areas that are primarily engaged in:

(1) research into processes and technology related to agricultural production in an urban setting;

(2) the production or development of tools or processes for agriculture in a manner suited for an urban setting; or

(3) agricultural activities in a manner suited for an urban setting.

(b) No state money may be used for purposes of the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 558 (H.B. 2994), Sec. 1, eff. September 1, 2011.

Sec. 44A.003. URBAN FARM MICROENTERPRISE SUPPORT PROGRAM LOANS. (a) On the receipt of gifts and grants of money under Section 44A.004, the board shall establish and implement a loan program supporting established and proposed urban farm microenterprises in urban areas by providing loans to expand, modernize, or otherwise improve the established microenterprises and to begin operation of proposed microenterprises.

(b) An applicant applying on behalf of a proposed microenterprise may receive a loan of up to $25,000 to begin operation of the microenterprise.

(c) An applicant applying on behalf of an established microenterprise may receive a loan of up to $50,000 to expand, modernize, or otherwise improve an established microenterprise.

(d) The board may reserve a portion of the total fund for use in cooperative loan programs established with the participation of other public or private lenders.

(e) The board by rule may provide for the administration by a private or public entity of the loans awarded under the loan program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 558 (H.B. 2994), Sec. 1, eff. September 1, 2011.

Sec. 44A.004. MONEY FOR LOANS. The board may accept gifts and grants of money from the federal government, local governments, or private corporations or other persons for use in making loans under

the urban farm microenterprise support program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 558 (H.B. 2994), Sec. 1, eff. September 1, 2011.

Sec. 44A.005. URBAN FARM MICROENTERPRISE DEVELOPMENT FUND. The urban farm microenterprise development fund is a fund in the comptroller's office. The following shall be deposited to the credit of the fund:

(1) amounts received by the state for loans made under the urban farm microenterprise support program;

(2) money received in repayment of loans made under the program; and

(3) other money received by the board for the program and required by the board to be deposited in the fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 558 (H.B. 2994), Sec. 1, eff. September 1, 2011.

CHAPTER 45. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM

Sec. 45.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that Texas and Israel have many interests in common. They face many of the same difficulties in agriculture; the geography of both areas produces semiarid climatic conditions; there is present in both areas a rising demand for a limited supply of water coupled with increasing pressures to minimize the use of energy in all aspects of agriculture. Scientific and technological cooperatives already produce close ties between the two areas while engaging in binational projects for scientific and industrial research and development.

A program to support joint agricultural research and development by, and the development of trade and business relations between, Texas and Israel will address common problems and make substantial contributions to the development of agriculture, trade, and business in both areas. Since Texas has long emphasized broad-based agricultural research and Israel has originated and developed agricultural technologies designed to maximize production with minimal use of resources such as water and labor, each of the two areas will benefit by sharing information and expertise.

(b) The purpose of this chapter is to:

(1) establish a program to promote and support practical and applied agricultural research and development that will result in mutual benefit to Texas and Israel and will help to provide solutions to food and fiber production problems wherever they exist, particularly those relating to water conservation; and

(2) establish a program of mutual cooperation that will foster the development of trade, mutual assistance, and business relations between Texas and Israel.

Added by Acts 1989, 71st Leg., ch. 1210, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 225, Sec. 2, eff. May 18, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 3.02, eff. September 1, 2009.

Sec. 45.002. DEFINITION. In this chapter, "applied research" means the process of assembling knowledge gained by careful and diligent search and studious inquiry and examination and using that knowledge to solve practical, real-world problems.

Added by Acts 1989, 71st Leg., ch. 1210, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 225, Sec. 3, eff. May 18, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 3.03, eff. September 1, 2009.

Sec. 45.005. GENERAL FUNCTIONS, POWERS, AND DUTIES. (a) The department may establish a binational program to support joint agricultural research and development with Israel. The scope of agricultural research and development which the program may promote and support encompasses all scientific activities related to agriculture, including production, processing, marketing, and agricultural services, with emphasis on the support of applied research to improve water, labor, and energy utilization in agriculture.

(b) The program shall support applied research in areas of potential mutual interest, including:

(1) water conservation;

(2) water management and use;
(3) soil management and conservation;
(4) innovative sources of energy for agricultural production;
(5) environmental aspects of agricultural technology;
(6) intensive crop production; and
(7) agricultural engineering and processing.

(c) The program may undertake agricultural research and development projects of mutual benefit that are located in Texas, Israel, or any other location considered advisable by the department or suggested by the advisory committee.

(d) The department may make research or development grants or loans to public or private entities who intend to carry out the stated objectives of the program.

(e) The program shall encourage or support the exchange of agricultural producers, scientists, teachers, students, or other types of agricultural experts between the two cooperating areas of Texas and Israel.

(f) The program shall encourage and support mutual cooperation that will foster the development of trade, mutual assistance, and business relations between Texas and Israel.

Added by Acts 1989, 71st Leg., ch. 1210, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 225, Sec. 5, eff. May 18, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 3.04, eff. September 1, 2009.

Sec. 45.007. FINANCING. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 3.07(b)(4), eff. September 1, 2009.

(b) The department may accept gifts and grants from the federal government, state government, and private sources, as well as legislative appropriations to carry out the purposes of this chapter. The use of gifts and grants other than legislative appropriation is subject only to limitations contained in the gift or grant.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 3.07(b)(4), eff. September 1, 2009.

(d) The department shall make an annual accounting of all money received, awarded, and expended during the year under this chapter to

the legislative committees responsible for agricultural issues.

Added by Acts 1989, 71st Leg., ch. 1210, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 3.05, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 3.07(b)(4), eff. September 1, 2009.

Sec. 45.009. TEXAS-ISRAEL EXCHANGE ADVISORY COMMITTEE. The department may establish a binational agricultural research advisory committee to provide guidance and direction on activities conducted under this chapter and the expenditure of money appropriated for the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 3.06, eff. September 1, 2009.

CHAPTER 46. "GO TEXAN" PARTNER PROGRAM

Sec. 46.001. FINDINGS. The legislature finds that this state needs a Texas agricultural product promotion program to increase consumer awareness of Texas agricultural products and expand the markets for Texas agricultural products. The legislature further finds that the Texas Department of Agriculture, through the establishment of the "Go Texan" Partner Program and use of program grants and matching funds, is the proper department to promote and advertise these products.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.002. DEFINITION. In this chapter "Texas agricultural product" means an agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(1) feed for use by livestock or poultry;
(2) fish or other aquatic species;
(3) livestock, a livestock product, or a livestock by-

product;

(4) planting seed;

(5) poultry, a poultry product, or a poultry by-product; or

(6) wildlife processed for food or by-products.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 208, Sec. 3, eff. May 21, 2001; Acts 2003, 78th Leg., ch. 604, Sec. 2, eff. Sept. 1, 2003.

Sec. 46.003. GENERAL AUTHORITY. The Texas Department of Agriculture shall establish and maintain the "Go Texan" Partner Program to encourage the development and expansion of markets for Texas agricultural products through participation of eligible applicants who provide funds to be matched for promotional marketing programs implemented by the department.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.004. ELIGIBLE APPLICANT. An eligible applicant must be:

(1) a state or regional organization or board that promotes the marketing and sale of Texas agricultural products and does not stand to profit directly from specific sales of agricultural commodities;

(2) a cooperative organization, as defined by department rule;

(3) a state agency or board that promotes the marketing and sale of agricultural commodities;

(4) a national organization or board that represents Texas producers and promotes the marketing and sale of Texas agricultural products;

(5) an eligible small business, as defined by department rule; or

(6) any other entity that promotes the marketing and sale of Texas agricultural products, as determined by the department.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.005. DEPARTMENT POWERS AND DUTIES. The department shall administer the "Go Texan" Partner Program. The duties of the department in administering the program include:

(1) developing procedures for acceptance and administration of funds received to administer the program, including appropriations, gifts, license plate revenue, and matching funds;

(2) developing application and selection procedures including procedures for soliciting and accepting applications and screening applications for review by the "Go Texan" Partner Program Advisory Board;

(3) developing a general promotional campaign for Texas agricultural products and advertising campaigns for specific Texas agricultural products based on project requests submitted by successful applicants;

(4) developing advertising programs and promotional materials for use by program participants and establishing guidelines on advertising activities by participants;

(5) contracting with media representatives for the purpose of dispersing promotional materials; and

(6) receiving matching funds from program participants and donations or grants from any source, and establishing internal reporting requirements for use of funds.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.006. REQUIREMENTS FOR PARTICIPATION. To be eligible for participation in the program through the use of matching funds under this chapter, an organization must:

(1) be an eligible applicant under Section 46.004 of this chapter;

(2) prepare and submit a project request and application as provided by department rule; and

(3) meet any other requirement established by department rule.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.007. PROJECT REQUESTS. (a) A project request submitted by an eligible participant must describe the advertising or

other market-oriented promotional activities to be carried out by the department using matching funds.

(b) The department may not approve a project request submitted under this section unless the request includes:

(1) a specific description of the project and how assistance received under this chapter could be expended in implementing the request;

(2) a description of anticipated benefits to be achieved as a result of the marketing promotional program; and

(3) additional information as required by the department.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.008. "GO TEXAN" PARTNER PROGRAM ACCOUNT. (a) The "Go Texan" partner program account is an account in the general revenue fund. The account is composed of:

(1) legislative appropriations;

(2) gifts, grants, donations, and matching funds received under Subsection (b);

(3) money required to be deposited in the account under Section 502.2761, Transportation Code; and

(4) other money required by law to be deposited in the account.

(b) The department may solicit and accept gifts in kind, donations, and grants of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of this chapter.

(c) Money in the account may be appropriated to the department only for the purpose of implementing and maintaining the "Go Texan" Partner Program.

(d) Income from money in the account shall be credited to the account.

(e) The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 208, Sec. 4, eff. May 21, 2001.

Sec. 46.009. USE OF FUNDS. (a) Funds received under this

chapter may only be used for activities promoting the sale of Texas agricultural products. The department by rule may allocate funds to categories of eligible participants and to general or product-specific promotional activities. The department may use the funds in an amount not to exceed $5,000 in a state fiscal year for the purchase of food and beverage refreshments at "Go Texan" promotional events.

(b) The department shall adopt rules to ensure that money in the "Go Texan" partner program account is used only for the purposes prescribed under this section.

(c) The payment of the administrative expenses under the program may not exceed seven percent of the amount of the legislative appropriation each biennium for the "Go Texan" partner program account.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 208, Sec. 5, eff. May 21, 2001.

Sec. 46.0095. SALE OF PROMOTIONAL ITEMS OR PROGRAM MERCHANDISE. (a) The department may sell or contract for the sale of "Go Texan" promotional items and program merchandise, including clothing, posters, and banners, in order to encourage the marketing and promotion of agricultural and other products grown, processed, or produced in this state. The department may use any available means, including direct marketing, mail, the Internet, and any other media format to advertise and sell those items.

(b) Money received from the sale of promotional items and program merchandise under this section may be appropriated only to the department for the department's activities or programs relating to the marketing and promotion of agricultural and other products grown, processed, or produced in this state.

Added by Acts 2001, 77th Leg., ch. 208, Sec. 6, eff. May 21, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 69 (S.B. 1086), Sec. 4, eff. May 17, 2011.

Sec. 46.010. "GO TEXAN" PARTNER PROGRAM ADVISORY BOARD. (a) The "Go Texan" Partner Program Advisory Board is composed of at least

eight members appointed by the commissioner to assist the department in the implementation of the "Go Texan" Partner Program.

(b) The board shall include:

(1) one representative from the department;

(2) one representative from the United States Department of Agriculture (USDA) Commodity Credit Corporation, involved in the promotion of agricultural commodities, who shall serve as a nonvoting member of the board and is not a member for purposes of establishing a quorum;

(3) one representative each from the radio, print, and television advertising media;

(4) one representative from the advertising profession;

(5) one consumer representative;

(6) one representative from the Internet website or electronic commerce industry;

(7) one representative with demonstrated expertise in economic analysis; and

(8) other members the commissioner determines as necessary for the purposes of this chapter.

(c) A member of the advisory board serves at the pleasure of the commissioner.

(d) A member serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of official board duties, subject to approval of the commissioner. Money for expense reimbursement shall be deducted from the "Go Texan" partner program account.

(e) Except as provided by Subsection (d), Chapter 2110, Government Code, does not apply to the board.

(f) An eligible applicant is not ineligible to participate in the program established under this chapter solely because a board member is also an officer, director, or employee of the applicant organization, provided that the board member shall be recused from an action taken by the board on an application involving an applicant organization with which the board member serves as an officer, director, or employee.

(g) The board shall:

(1) review applications of eligible participants and approve or deny funding under this chapter;

(2) advise the department on matters related to the administration of the account; and

(3) advise the department on the adoption of rules relating to the administration of the "Go Texan" Partner Program.

(h) The commissioner shall provide the board with staff necessary to assist the board in carrying out its duties under this chapter.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 208, Sec. 7, eff. May 21, 2001.

Sec. 46.011. CRITERIA FOR ALLOCATION OF FUNDS. The department shall by rule and with the advice of the board establish criteria for allocation of funds to participant projects. Rules adopted under this section must include:

(1) the factors to be considered in evaluating projects; and

(2) a maximum funding amount for each project.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.012. RULEMAKING AUTHORITY. The department shall adopt rules to administer this chapter including rules for the use of the "Go Texan" logo.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

Sec. 46.013. ADMINISTRATIVE PENALTIES; CIVIL PENALTIES; INJUNCTIVE RELIEF. (a) In addition to the other provisions of this chapter, a person violates this chapter if the person:

(1) uses, reproduces, or distributes the logo of the "Go Texan" Partner Program without registering with the department; or

(2) violates a rule adopted by the department under this chapter.

(b) A person who violates this chapter:

(1) forfeits the person's ability to use the logo of the "Go Texan" Partner Program; and

(2) is ineligible for a grant of funds under this chapter.

(c) The department may assess an administrative penalty as provided by Section 12.020 against a person who violates this

chapter.

(d) A person who violates this chapter is subject to a civil penalty not to exceed $500 for each violation. Each day that a violation continues may be considered a separate violation for purposes of a civil penalty assessed under this chapter.

(e) At the request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the civil penalty.

(f) A civil penalty collected under this section shall be deposited to the credit of the general revenue fund.

(g) At the request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened to occur or is occurring shall file suit for the appropriate injunctive relief to prevent or abate a violation of this chapter. Venue for an action brought under this subsection is in Travis County.

Added by Acts 1999, 76th Leg., ch. 186, Sec. 2, eff. Sept. 1, 1999.

CHAPTER 47. TEXAS OYSTER AND SHRIMP PROGRAM

SUBCHAPTER B. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM IN DEPARTMENT OF AGRICULTURE

Sec. 47.051. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the shrimp advisory committee.

(2) "Coastal waters" means all the salt water of the state, including the portion of the Gulf of Mexico that is within the jurisdiction of the state.

(3) "Program" means the Texas shrimp marketing assistance program.

(4) "Shrimp marketing account" means the account in the general revenue fund established under Section 77.002(b), Parks and Wildlife Code.

(5) "Texas-produced shrimp" means wild-caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Parks and Wildlife Department.

Added by Acts 2003, 78th Leg., ch. 265, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 4, eff. June 20, 2003.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 1, eff. September 1, 2009.

Sec. 47.052. PROGRAM ESTABLISHED. (a) The Texas shrimp marketing assistance program is established in the department to assist the Texas wild-caught shrimping industry in promoting and marketing Texas-produced shrimp and educating the public about the Texas wild-caught shrimping industry and Texas-produced shrimp.

(b) The commissioner, in consultation with the advisory committee established under Section 47.053, shall adopt rules as necessary to implement the program.

(c) The department may accept grants, gifts, and gratuities from any source, including any governmental entity, any private or public corporation, and any other person, in furtherance of the program. Any funds received as a grant, gift, or gratuity shall be deposited in the shrimp marketing account under Section 77.002, Parks and Wildlife Code.

(d) The program shall be funded at a minimum level of $250,000 per fiscal year with funds deposited into the shrimp marketing account under Section 77.002, Parks and Wildlife Code. The department may not expend more than two percent of the annual program budget on out-of-state travel.

Added by Acts 2003, 78th Leg., ch. 265, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 4, eff. June 20, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 2, eff. September 1, 2009.

Sec. 47.053. ADVISORY COMMITTEE. (a) The commissioner shall appoint a shrimp advisory committee to assist the commissioner in implementing the program established under this subchapter and in the expenditure of funds appropriated for the purpose of this subchapter.

(b) The advisory committee shall be composed of the following nine members:

(1) two owners of commercial bay shrimp boats;

(2) two owners of commercial gulf shrimp boats;

(3) one retail wild-caught shrimp dealer;

(4) one wholesale wild-caught shrimp dealer;

(5) one person employed by an institution of higher education as a researcher or instructor specializing in the area of food science, particularly seafood;

(6) one member of the seafood restaurant industry; and

(7) one representative of the public.

(c) The members of the advisory committee serve without compensation but may be reimbursed for expenses incurred in the direct performance of their duties on approval by the commissioner.

(d) An advisory committee member serves a three-year term, with the terms of three or four members expiring August 31 of each year. The commissioner may reappoint a member to the advisory committee.

(e) The members of the advisory committee shall elect a presiding officer from among the members and shall adopt rules governing the operation of the committee. The rules shall specify that five members of the advisory committee constitute a quorum sufficient to conduct the meetings and business of the committee.

(f) The advisory committee shall meet as necessary, but not less frequently than once each calendar year, to provide guidance to the commissioner in establishing and implementing the program.

Added by Acts 2003, 78th Leg., ch. 265, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 3, eff. September 1, 2009.

Sec. 47.054. PROGRAM STAFF. (a) The commissioner shall employ one or more persons as employees of the department to staff the program.

(b) Unless otherwise expressly provided by the legislature, the source of funding for the payment of employee salaries shall be funds generated from the program, including the 10 percent license fee increase authorized by Section 77.002, Parks and Wildlife Code.

Added by Acts 2003, 78th Leg., ch. 265, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 4, eff.

September 1, 2009.

Sec. 47.055. PROMOTION, MARKETING, AND EDUCATION. The program shall promote and advertise the Texas wild-caught shrimping industry by:

(1) developing and maintaining a database of Texas shrimp wholesalers that sell Texas-produced shrimp;

(2) operating a toll-free telephone number to:

(A) receive inquiries from persons who wish to purchase a particular type of Texas-produced shrimp; and

(B) make information about the Texas wild-caught shrimping industry available to the public;

(3) developing a wild-caught shrimping industry marketing plan to increase the consumption of Texas-produced shrimp;

(4) educating the public about Texas-produced shrimp by providing publicity about the information in the program's database to the public and making the information available to the public through the department's toll-free telephone number and electronically through the Internet;

(5) promoting the Texas wild-caught shrimping industry; and

(6) promoting and marketing, and educating consumers about, Texas-produced shrimp using any other method the commissioner determines appropriate.

Added by Acts 2003, 78th Leg., ch. 265, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 5, eff. September 1, 2009.

CHAPTER 48. AGRICULTURAL PROJECTS IN CERTAIN URBAN SCHOOLS

Sec. 48.001. CREATION. (a) Consistent with this chapter, the department by rule shall develop a program to award grants to public elementary and middle schools located in large urban school districts for the purpose of establishing:

(1) demonstration agricultural projects; or

(2) other projects designed to foster an understanding and awareness of agriculture.

(b) The department may award a grant under this chapter to a nonprofit organization that partners with a school described by Subsection (a) to establish a project described by Subsection (a) at the school.

Added by Acts 1999, 76th Leg., ch. 975, Sec. 1, eff. June 18, 1999.
Amended by Acts 2001, 77th Leg., ch. 9, Sec. 1, eff. April 11, 2001.
Renumbered from Sec. 46.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(1), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1147 (S.B. 827), Sec. 1, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 596 (S.B. 199), Sec. 1, eff. June 17, 2011.

Sec. 48.002. ELIGIBILITY. Subject to available funds, a public elementary or middle school, or a nonprofit organization that partners with the school, is eligible to receive a grant under this chapter if the school:

(1) is located in a school district with an enrollment of at least 49,000 students; and

(2) submits to the department, at the time and in the form required by the department, a proposal for a demonstration agricultural project that includes:

(A) a description of the proposed project;

(B) a schedule of projected costs for the project;

(C) a statement of the educational benefits of the project, including how the project will improve understanding of agriculture; and

(D) if a nonprofit organization is applying for the grant, a statement from the school that the nonprofit organization is partnering with the school.

Added by Acts 1999, 76th Leg., ch. 975, Sec. 1, eff. June 18, 1999.
Amended by Acts 2001, 77th Leg., ch. 9, Sec. 2, eff. April 11, 2001.
Renumbered from Sec. 46.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(1), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1147 (S.B. 827), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 596 (S.B. 199), Sec. 2, eff. June 17, 2011.

Sec. 48.004. REPORT. A school or nonprofit organization that receives a grant under this chapter must report the results of the project to the department in a manner determined by the department.

Added by Acts 1999, 76th Leg., ch. 975, Sec. 1, eff. June 18, 1999.
Renumbered from Sec. 46.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(1), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 596 (S.B. 199), Sec. 3, eff. June 17, 2011.

Sec. 48.005. FUNDS. The department may solicit and accept gifts, grants, and other donations from any source to carry out this chapter.

Added by Acts 1999, 76th Leg., ch. 975, Sec. 1, eff. June 18, 1999.
Renumbered from Sec. 46.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(1), eff. Sept. 1, 2001.

CHAPTER 49. AGRICULTURAL TECHNOLOGY PROGRAM

Sec. 49.001. DEFINITIONS. In this chapter:

(1) "Agricultural crisis" means an event or condition, including adverse weather conditions, water shortages, disruption in transportation, low commodity prices, an animal health issue, crop disease, or insect infestation, that could disrupt or jeopardize an aspect of the agricultural industry.

(2) "Agri-tech program" means the agricultural technology program established under this chapter.

(3) "Applied research" means research directed at gaining the knowledge or understanding necessary to meet a specific and recognized need, including the discovery of new scientific knowledge that has specific objectives relating to products or processes.

(4) "Eligible institution" means an institution of higher education, as that term is defined by Section 61.003, Education Code, that is designated as an eligible institution under Section

49.002(e).

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 7, eff. Sept. 1, 1999. Renumbered from Sec. 46.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(2), 21.002(2), eff. Sept. 1, 2001.

Sec. 49.002. ADMINISTRATION; GUIDELINES AND PROCEDURES. (a) The department shall develop, maintain, and administer the agri-tech program to provide support for eligible institutions to conduct research projects on methods to address agricultural crises in this state.

(b) In awarding funds to support projects under this chapter, the department shall:

(1) give priority to applied research projects that the commissioner determines to be necessary to address an immediate agricultural crisis; and

(2) consider the recommendations of the Commodity Crisis Council for specific projects.

(c) The department shall award funds to support projects as needed to address agricultural crises in this state.

(d) The department shall develop and maintain guidelines and procedures to provide awards under this chapter for specific projects at eligible institutions on a competitive, peer-review basis.

(e) The department shall determine whether an institution of higher education qualifies as an eligible institution for the purposes of this chapter. To be designated as an eligible institution, an institution of higher education must demonstrate an exceptional capability to attract federal, state, and private funding for scientific and technical research and have an exceptionally strong research staff and the necessary equipment and facilities.

(f) In considering projects for selection, the commissioner shall give special consideration to projects that:

(1) leverage funds from other sources; and

(2) propose innovative, collaborative efforts:

(A) across academic disciplines;

(B) involving two or more eligible institutions; or

(C) involving eligible institutions, private industry, and the federal government.

(g) The commissioner may adopt rules necessary to accomplish

the purposes of this chapter.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 7, eff. June 19, 1999. Renumbered from Sec. 46.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(2), eff. Sept. 1, 2001.

Sec. 49.003. AGRICULTURAL TECHNOLOGY ACCOUNT. (a) The agricultural technology account is an account in the general revenue fund.

(b) The agricultural technology account consists of legislative appropriations, gifts and grants received under Subsection (c), and other money required by law to be deposited in the account.

(c) The department may solicit and accept gifts in kind and grants of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of this chapter.

(d) Funds in the agricultural technology account may be used only as provided by this chapter. The account is exempt from the application of Section 403.095, Government Code.

(e) Income from money in the account shall be credited to the account.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 7, eff. June 19, 1999. Renumbered from Sec. 46.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(2), eff. Sept. 1, 2001.

Sec. 49.004. USE OF FUNDS IN AGRICULTURAL TECHNOLOGY ACCOUNT. (a) From funds appropriated for the agri-tech program, the comptroller shall issue warrants to each eligible institution in the amount certified by the department to the comptroller.

(b) Funds awarded from the agricultural technology account may be expended to support the particular research project for which the award is made and may not be expended for the general support of research and instruction at the institution conducting or sponsoring the project or for the construction or remodeling of a facility.

(c) Funds in the agricultural technology account shall be used, when practicable within the purposes of this chapter, to match grants provided by the federal government or private industry for specific collaborative research projects at eligible institutions.

(d) Supplies, materials, services, and equipment purchased with funds obtained under this section are not subject to the purchasing authority of the comptroller.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 7, eff. June 19, 1999. Renumbered from Sec. 46.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(2), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.81, eff. September 1, 2007.

Sec. 49.005. PROGRESS REPORTS. An institution receiving funds under this chapter shall report on the progress of the funded research to the department not later than September 1 of each year.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 7, eff. June 19, 1999. Renumbered from Sec. 46.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(2), eff. Sept. 1, 2001.

Sec. 49.006. MERIT REVIEW. The commissioner shall appoint a committee consisting of representatives of the agricultural industry and of private enterprise advanced technology research organizations to evaluate the agri-tech program's effectiveness. The committee shall report its findings to the department not later than September 1 of the second year of each biennium.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 7, eff. June 19, 1999. Renumbered from Sec. 46.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(2), eff. Sept. 1, 2001.

CHAPTER 50. AGRICULTURE AND WILDLIFE RESEARCH PROGRAM

Sec. 50.001. PROGRAM. The Texas Agricultural Experiment Station, in consultation with the Agriculture and Wildlife Research and Management Advisory Committee established under Section 88.216, Education Code, shall develop and administer a program to finance agriculture and wildlife research that the Texas Agricultural Experiment Station determines to be of the highest scientific merit and to offer significant promise in providing new directions for

long-term solutions to continued agriculture production, water availability, and wildlife habitat availability.

Added by Acts 1999, 76th Leg., ch. 1074, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 46.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(3), eff. Sept. 1, 2001.

Sec. 50.002. TERM OF AWARD. An award under Section 50.001 must be granted for a two-year period and may be extended at the end of that period after review.

Added by Acts 1999, 76th Leg., ch. 1074, Sec. 2, eff. June 18, 1999. Renumbered and amended from Sec. 46.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(3), Sec. 21.002(1), eff. Sept. 1, 2001.

Sec. 50.003. FUNDS. The Texas Agricultural Experiment Station may solicit and accept gifts and grants from any public or private source, in addition to other appropriations. The use of gifts and grants is subject to any limitations contained in the gift or grant.

Added by Acts 1999, 76th Leg., ch. 1074, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 46.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(3), eff. Sept. 1, 2001.

Sec. 50.004. ANNUAL ACCOUNTING. The Texas Agricultural Experiment Station shall provide to the committee in each house of the legislature having jurisdiction over agricultural matters an annual accounting of all money received, awarded, and expended during the year.

Added by Acts 1999, 76th Leg., ch. 1074, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 46.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(3), eff. Sept. 1, 2001.

CHAPTER 50A. TEXAS FOOD FOR HEALTH ADVISORY COUNCIL

Sec. 50A.001. PURPOSE. The purpose of the Texas Food for Health Advisory Council is to:

(1) coordinate food-for-health research programs in this state;

(2) promote the use of food-for-health research programs by fruit and vegetable growers and state and federal agencies;

(3) promote increased consumption of fruits and vegetables grown in this state; and

(4) coordinate research in an effort to produce more nutritious fruits and vegetables.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.002. DEFINITION. In this chapter, "council" means the Texas Food for Health Advisory Council.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.004. COMPOSITION. (a) The council is composed of the following nine members:

(1) eight members who are appointed jointly by the commissioner of public health and the vice chancellor for The Texas A&M University System Agriculture Program; and

(2) one member who is a representative of the Department of Agriculture and is appointed by the commissioner of agriculture.

(b) At least four members of the council who are appointed under Subsection (a)(1) must each represent one of the following:

(1) the horticulture industry;

(2) the nutrition industry;

(3) the produce industry; or

(4) a local, county, or state health agency.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.005. TERMS. Members of the council serve staggered six-year terms, with the terms of three members expiring on January 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.006. PRESIDING OFFICER. The commissioner of public health and the vice chancellor for The Texas A&M University System Agriculture Program may jointly appoint the presiding officer or may authorize the council members to elect a presiding officer from among the members of the council.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.007. MEETINGS. The council shall meet at least once each calendar quarter at a time and place designated by the presiding officer.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.008. STAFF; ADMINISTRATION. (a) The council is administratively attached to the Texas Agricultural Experiment Station.

(b) The Texas Agricultural Experiment Station shall provide support staff to serve the council.

(c) The council may retain general counsel to assist in the organization of the council and the adoption of procedures for awarding contracts.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.009. APPLICABLE LAW. The council is subject to the open meetings law, Chapter 551, Government Code, and the administrative procedure law, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.010. DUTIES. (a) The council shall:

(1) adopt procedures as necessary to administer this chapter, including procedures for awarding contracts under this chapter;

(2) issue requests for research proposals and award grants:

(A) to enhance the health benefits of fruits and

vegetables; or

(B) to help growers maximize crop yields through applied research;

(3) develop educational materials that promote the benefits of consuming fruits and vegetables; and

(4) in cooperation with the Texas Agricultural Experiment Station, The Texas A&M University System, Texas Tech University, The University of Texas System, Texas Woman's University, state agencies, and produce associations, develop innovative educational programs related to appropriate and safe methods of storing, preparing, and serving fresh produce.

(b) The council may:

(1) issue requests for proposals as necessary to administer this chapter; or

(2) publish educational materials or other materials developed in conjunction with employees of the Texas Agricultural Experiment Station, The Texas A&M University System, Texas Tech University, The University of Texas System, or Texas Woman's University.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.011. FINANCES. (a) The council may accept, for the purposes of this chapter, gifts and grants from public and private sources, subject only to limitations contained in the gift or grant.

(b) Funds appropriated for the purposes of this chapter shall be expended at the direction of the council on grants approved by a majority of the council.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.012. REPORTING. (a) The Texas Agricultural Experiment Station shall prepare annually a complete and detailed written report about:

(1) all funds received and disbursed by the council during the preceding fiscal year;

(2) the council's progress through funded projects in improving the health benefits of produce grown in this state;

(3) the development of an information system or network to

share health benefit information with state agencies responsible for feeding programs and for distributing dietary information to consumers in this state; and

(4) recommendations for improving the health of consumers through increased consumption of this state's produce.

(b) The part of the annual report required by Subsection (a)(1) must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

(c) The annual report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, the commissioner of agriculture, the commissioner of public health, and the vice chancellor for The Texas A&M University System Agriculture Program.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

Sec. 50A.013. DEPARTMENT OF AGRICULTURE. The Department of Agriculture shall serve as a resource and in an advisory capacity to the council.

Added by Acts 2001, 77th Leg., ch. 180, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 50B. TEXAS WINE INDUSTRY DEVELOPMENT ACT

Sec. 50B.001. FINDINGS AND PURPOSE. The legislature finds that:

(1) it is in the public interest to encourage the orderly growth and development of sustainable labor-intensive, value-added agricultural industries such as the wine grape growing and wine making industries;

(2) the production and distribution of wine and wine-related products constitute an important industry of this state that stimulates tourism and provides substantial and necessary revenues for the state and employment for the state's residents and provides an important food that benefits the public health and welfare; and

(3) it is vital to the continued economic well-being and general welfare of the citizens of this state that the state's wine grapes and wine be properly promoted by:

(A) enabling the wine industry in this state to help itself in establishing orderly, fair, sound, efficient, and

unhampered marketing of wine grapes and the wines they produce; and

(B) working to stabilize the wine industry in the state by increasing markets for wine grapes and wine within the state and the nation and internationally.

Added by Acts 2005, 79th Leg., Ch. 878 (S.B. 1137), Sec. 2, eff. June 17, 2005.

Sec. 50B.002. WINE INDUSTRY DEVELOPMENT ADVISORY COMMITTEE. (a) The commissioner shall appoint a wine industry development advisory committee to:

(1) develop a long-term vision and marketable identity for the wine industry in the state that take into consideration future industry development, funding, research, educational programming, risk management, and marketing;

(2) assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program under Chapter 110, Alcoholic Beverage Code; and

(3) assist and advise the commissioner in determining the best and most productive and efficient expenditures of the wine industry development fund.

(b) The committee consists of members appointed by the commissioner to represent a diverse cross-section of the wine industry, including representatives of:

(1) grape growers representing various regions of this state;

(2) wineries representing a variety of small, medium, and large formats from the various regions of this state;

(3) researchers or educators specializing in viticulture or enology;

(4) consumers who are not affiliated with the alcoholic beverage industry;

(5) the department; and

(6) the Texas Alcoholic Beverage Commission.

(b-1) The members described by Subsections (b)(4) and (6) are nonvoting members.

(c) The members of the committee serve without compensation.

(d) A member of the committee serves at the pleasure of the commissioner for a term of two years. The commissioner may reappoint

a member to the committee.

(e) The commissioner shall select a presiding officer from among the members and adopt rules governing the operation of the committee.

(f) The committee shall meet as necessary to provide guidance to the commissioner.

(g) Not later than September 1 of each year, the committee shall provide the commissioner with a written report containing:

(1) a summary of the committee's discussions, conclusions, and recommendations from the fiscal year preceding that date;

(2) a proposed schedule and plan of action for the fiscal year beginning on that date designed to implement and further the objectives of this chapter and Chapter 110, Alcoholic Beverage Code;

(3) a proposed budget and prioritized spending plan for expenditures of the wine industry development fund; and

(4) other information requested by the commissioner or determined by a majority of the committee to be appropriate for inclusion in the report.

Added by Acts 2005, 79th Leg., Ch. 878 (S.B. 1137), Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.02, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 846 (S.B. 880), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 846 (S.B. 880), Sec. 2, eff. September 1, 2015.

Sec. 50B.0025. ANNUAL PLAN AND BUDGET. Not later than November 1 of each year, the commissioner shall prepare for the current fiscal year the schedule and plan of action and budget and prioritized spending plan described by Section 50B.002(g), considering the recommendations of the committee under that section and following them to the extent the commissioner considers appropriate.

Added by Acts 2015, 84th Leg., R.S., Ch. 846 (S.B. 880), Sec. 3, eff. September 1, 2015.

Sec. 50B.003. WINE INDUSTRY DEVELOPMENT FUND. (a) The wine industry development fund is an account in the general revenue fund and consists of funds deposited to the account under this section.

(b) Except as provided by Sections 205.03(l), (m), and (n), Alcoholic Beverage Code, money in the account may be appropriated only to the department and may be used only for the purpose of:

(1) providing funding to public or private entities to conduct surveys, research, and other projects related to:

(A) developing the Texas wine industry;

(B) developing viticulture and enology-related education programs;

(C) eliminating and eradicating diseases and pests that negatively impact the production of grapes and wine in the United States; and

(D) developing technologies or practices that could benefit the production of grapes and wine; and

(2) any administrative costs the department incurs in fulfilling the purposes described by Subdivision (1).

(c) The account is exempt from the application of Section 403.095, Government Code.

(d) The department may accept grants, gifts, or gratuities from any source, including a governmental entity, a private or public corporation, or any other person, that are made for the purpose of furthering the Texas wine industry. Any funds received under this subsection shall be deposited in the wine industry development fund.

Added by Acts 2005, 79th Leg., Ch. 878 (S.B. 1137), Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 846 (S.B. 880), Sec. 4, eff. September 1, 2015.

CHAPTER 50C. TEXAS ORGANIC AGRICULTURAL INDUSTRY ADVISORY BOARD

Sec. 50C.001. DEFINITION. In this chapter, "board" means the Texas Organic Agricultural Industry Advisory Board.

Added by Acts 2007, 80th Leg., R.S., Ch. 477 (H.B. 2345), Sec. 1, eff. September 1, 2007.

Sec. 50C.002. COMPOSITION. (a) The board is composed of the following 13 members appointed by the commissioner:

(1) four members who produce organic agricultural products;

(2) two members who are retail sellers of organic agricultural products;

(3) one member who distributes organic agricultural products;

(4) one member who processes organic agricultural products;

(5) one member who represents a Texas trade association that represents the organic agricultural industry;

(6) one member who represents the Texas Cooperative Extension;

(7) one technical advisor member who is employed by an institution of higher education, as defined by Section 61.003, Education Code, or government agency as a researcher or instructor:

(A) in the field of organic agriculture products or sustainable agriculture; or

(B) who has technical expertise in soil biology, agronomy, entomology, horticulture, or organic farming systems;

(8) one member who represents the public; and

(9) one representative from the department.

(b) The board shall elect a presiding officer from among its members.

(c) Members of the board serve staggered terms of four years, with either six or seven members' terms, as applicable, expiring February 1 of each odd-numbered year. Members may be reappointed at the end of a term.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the board.

(e) Service on the board by a state officer or employee is an additional duty of the member's office or employment. Members of the board are not entitled to compensation or reimbursement of expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 477 (H.B. 2345), Sec. 1, eff. September 1, 2007.

Sec. 50C.003. DUTIES.The board shall:

(1) assist the department in:

(A) assessing the state of the organic agricultural

products industry in this state;

(B) developing recommendations to the commissioner and the legislature to promote and expand the organic agricultural products industry in this state;

(C) identifying and obtaining grants and gifts to promote and expand the organic agricultural products industry in this state; and

(D) developing a statewide organic agricultural products education and awareness campaign that:

(i) utilizes the Texas Cooperative Extension's educational programs and channels of distribution, when appropriate;

(ii) is consistent with Sections 2.002 and 12.002 and any department policies relating to the promotion of Texas agriculture and agricultural products; and

(iii) does not refer negatively to any other agriculture process that is used or to any agricultural product that is grown or sold in this state; and

(2) review and provide guidance on rules impacting the organic agricultural products industry in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 477 (H.B. 2345), Sec. 1, eff. September 1, 2007.

Sec. 50C.004. MEETINGS. The board shall meet at least once each year and may meet at other times considered necessary by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 477 (H.B. 2345), Sec. 1, eff. September 1, 2007.

Sec. 50C.005. STAFF. The board is administratively attached to the department. The department shall provide the board with the staff necessary to carry out its duties under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 477 (H.B. 2345), Sec. 1, eff. September 1, 2007.

CHAPTER 50D. TEXAS BIOENERGY POLICY COUNCIL AND TEXAS BIOENERGY RESEARCH COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 50D.001. PURPOSE. The purpose of the Texas Bioenergy Policy Council and the Texas Bioenergy Research Committee is to promote the goal of making biofuels a significant part of the energy industry in this state not later than January 1, 2019.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.002. DEFINITIONS. In this chapter:

(1) "Alternative chemical feedstock" means a feedstock that is produced by a thermochemical process that converts alternative sources of fuel, including biomass, or other renewable sources, to a raw material to be used in the chemical manufacturing process.

(2) "Policy council" means the Texas Bioenergy Policy Council.

(3) "Research committee" means the Texas Bioenergy Research Committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.003. ADMINISTRATIVE SUPPORT. The department:

(1) shall provide administrative support, including staff, to the policy council; and

(2) may allocate appropriate administrative support to the research committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

SUBCHAPTER B. TEXAS BIOENERGY POLICY COUNCIL

Sec. 50D.011. COMPOSITION. (a) The policy council is composed of the following 18 members:

(1) the commissioner, who serves as chair of the policy council;

(2) one representative of the Railroad Commission of Texas designated by the commission;

(3) one representative of the Texas Commission on Environmental Quality designated by the commission;

(4) one representative of the Public Utility Commission of Texas designated by the commission;

(5) one representative of the Texas Water Development Board designated by the board;

(6) the chancellor of The Texas A&M University System, or the person designated by the chancellor;

(7) the chancellor of the Texas Tech University System, or the person designated by the chancellor;

(8) the chancellor of The University of Texas System, or the person designated by the chancellor;

(9) one member of the senate appointed by the lieutenant governor;

(10) one member of the house of representatives appointed by the speaker of the house of representatives; and

(11) eight members appointed by the governor, with each of the following industries or groups represented by one member:

(A) research and development of feedstock and feedstock production;

(B) retail distribution of energy;

(C) transportation of biomass feedstock;

(D) agricultural production for bioenergy production or agricultural waste used for production of bioenergy;

(E) production of biodiesel from nonfood feedstocks;

(F) production of ethanol from nonfood feedstocks;

(G) bio-based electricity generation; and

(H) chemical manufacturing.

(b) The eight members of the policy council appointed by the governor serve at the governor's pleasure and have two-year staggered terms, with the terms of either three or four members expiring on January 1 of each year.

(c) The governor shall fill any vacancy in a position appointed by the governor for the remainder of the unexpired term.

(d) Appointments to the policy council must be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) Subject to Section 50D.017, the policy council is subject to Chapters 551 and 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 459 (S.B. 916), Sec. 1, eff. June 14, 2013.

Sec. 50D.012. REMOVAL OF POLICY COUNCIL MEMBERS. (a) A member of the policy council may be removed from the policy council if the member:

(1) is not able to devote the time necessary to perform the member's duties as a member;

(2) cannot because of illness or disability discharge the member's duties or cannot discharge those duties for a substantial part of the term for which the member is appointed; or

(3) is absent from more than half of the regularly scheduled policy council meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the policy council.

(b) An action of the policy council is not invalid because a ground for removal of a policy council member exists at the time the action is taken.

(c) If the commissioner has knowledge that a potential ground for removal of a policy council member exists, the commissioner shall notify the governor and attorney general of the potential ground for removal.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.013. DUTIES OF POLICY COUNCIL. (a) The policy council shall:

(1) provide a vision for unifying this state's agricultural, energy, and research strengths in a successful launch of a cellulosic biofuel and bioenergy industry;

(2) foster development of cellulosic-based and bio-based fuels and build on the Texas emerging technology fund's investments in leading-edge energy research and efforts to commercialize the production of bioenergy;

(3) pursue the creation of a next-generation biofuels energy research program at a university in this state;

(4) work to procure federal and other funding to aid this state in becoming a bioenergy leader;

(5) study the feasibility and economic development effect of a blending requirement for biodiesel or cellulosic fuels;

(6) pursue the development and use of thermochemical process technologies to produce alternative chemical feedstocks;

(7) study the feasibility and economic development of the requirements for pipeline-quality, renewable natural gas; and

(8) perform other advisory duties as requested by the commissioner regarding the responsible development of bioenergy resources in this state.

(b) The policy council shall meet regularly as necessary at the call of the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.014. REIMBURSEMENT OF EXPENSES. A member of the policy council may not receive compensation for service on the council. Subject to availability of funds, a policy council member may receive reimbursement for the actual and necessary expenses incurred while conducting policy council business.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.015. COORDINATION WITH FEDERAL GOVERNMENT ON BIOENERGY POLICY. (a) In this section, "state agency" has the meaning assigned by Section 315.002, Government Code.

(b) The policy council shall take reasonable steps to track the development of federal bioenergy policy and provide information relating to federal regulatory developments to each affected state agency.

(c) Not later than October 1, 2009, the Texas Commission on Environmental Quality shall request a determination by the United States Environmental Protection Agency that this state will not lose nitrogen oxide emission reduction credits currently recognized as

part of the state implementation plan if:

(1) this state allows the use of biodiesel and biodiesel blends with no additives; and

(2) the final blend of fuel complies with state and federal standards for cetane and aromatic hydrocarbon content.

(d) If the Texas Commission on Environmental Quality receives a determination from the United States Environmental Protection Agency that this state will not lose nitrogen oxide emission reduction credits as a result of the use of biodiesel or biodiesel blends with no additives, or if the commission independently makes that determination, the commission may not adopt or implement rules that restrict the production or distribution of biodiesel or biodiesel blends in a manner more stringent than provided by federal law.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.016. QUORUM. A quorum of the policy council consists of not less than half of the members of the policy council. A member who participates in a meeting by telephone conference call, videoconference, or other similar telecommunication method may be counted to establish a quorum.

Added by Acts 2013, 83rd Leg., R.S., Ch. 459 (S.B. 916), Sec. 2, eff. June 14, 2013.

Sec. 50D.017. MEETING BY TELECONFERENCE. (a) Notwithstanding Chapter 551, Government Code, or any other law, the policy council may hold an open or closed meeting by telephone conference call, videoconference, or other similar telecommunication method if:

(1) notice is given for the meeting as for other meetings;

(2) the notice specifies a location for the meeting at which the public may attend;

(3) each part of the meeting that is required to be open to the public is audible to the public at the location specified in the notice of the meeting; and

(4) the meeting is recorded by electronic or other means and the recording of each portion of the meeting that is required to be open to the public is made available to the public.

(b) A member of the policy council may participate by telephone conference call, videoconference, or other similar telecommunication method in a policy council meeting at which other members are physically present and may vote.

Added by Acts 2013, 83rd Leg., R.S., Ch. 459 (S.B. 916), Sec. 2, eff. June 14, 2013.

SUBCHAPTER C. TEXAS BIOENERGY RESEARCH COMMITTEE

Sec. 50D.021. COMPOSITION. (a) The research committee is composed of the following 16 members:

(1) the commissioner or the person designated by the commissioner, who serves as the chair of the research committee;

(2) one representative of the Railroad Commission of Texas designated by the commission;

(3) one representative of the Texas Commission on Environmental Quality designated by the commission;

(4) one representative of the Public Utility Commission of Texas designated by the commission;

(5) one representative of the Texas Water Development Board designated by the board;

(6) one researcher or specialist in the bioenergy field from each of the following university systems, appointed by the chancellor of the system:

(A) The Texas A&M University System;

(B) the Texas Tech University System; and

(C) The University of Texas System; and

(7) eight members, with a member appointed by each policy council member appointed by the governor under Section 50D.011(a)(11).

(b) The eight members of the research committee appointed under Subsection (a)(7) serve at the governor's pleasure and have two-year staggered terms, with the terms of either three or four members expiring on January 1 of each year.

(c) The governor shall fill any vacancy in a position appointed under Subsection (a)(7) for the remainder of the unexpired term.

(d) Appointments to the research committee must be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) Subject to Section 50D.026, research committee is subject to Chapters 551 and 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 459 (S.B. 916), Sec. 3, eff. June 14, 2013.

Sec. 50D.022. REMOVAL OF RESEARCH COMMITTEE MEMBERS. (a) A member of the research committee may be removed from the research committee if the member:

(1) is not able to devote the time necessary to perform the member's duties as a member;

(2) cannot because of illness or disability discharge the member's duties or cannot discharge those duties for a substantial part of the term for which the member is appointed; or

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the committee.

(b) An action of the research committee is not invalid because a ground for removal of a committee member exists at the time the action is taken.

(c) If the commissioner has knowledge that a potential ground for removal of a committee member exists, the commissioner shall notify the governor and attorney general of the potential ground for removal.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.023. PURPOSES AND DUTY OF RESEARCH COMMITTEE. (a) The research committee is a research consortium among academic and technical research leadership, with active involvement by all sectors of the economy interested in bioenergy development.

(b) The research committee shall:

(1) identify and research appropriate and desirable biomass feedstock for each geographic region of this state;

(2) investigate logistical challenges to the planting, harvesting, and transporting of large volumes of biomass and provide recommendations to the policy council that will aid in overcoming barriers to the transportation, distribution, and marketing of bioenergy;

(3) identify strategies for and obstacles to the potential transition of the agriculture industry in western regions of this state to dryland bioenergy crops that are not dependent on groundwater resources;

(4) explore regions of this state, including coastal areas, that may contain available marginal land for use in growing bioenergy feedstocks;

(5) study the potential for producing oil from algae;

(6) study the potential for the advancement of thermochemical process technologies to produce alternative chemical feedstocks;

(7) study the potential for producing pipeline-quality natural gas from renewable sources; and

(8) perform other research duties as requested by the commissioner relating to the responsible development of bioenergy resources in this state.

(c) The research committee shall meet at the call of the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.024. REIMBURSEMENT OF EXPENSES. A member of the research committee may not receive compensation for service on the committee. Subject to availability of funds, a research committee member may receive reimbursement for the actual and necessary expenses incurred while conducting research committee business.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.03, eff. September 1, 2009.

Sec. 50D.025. QUORUM. A quorum of the research committee consists of not less than half of the members of the research committee. A member who participates in a meeting by telephone

conference call, videoconference, or other similar telecommunication method may be counted to establish a quorum.

Added by Acts 2013, 83rd Leg., R.S., Ch. 459 (S.B. 916), Sec. 4, eff. June 14, 2013.

Sec. 50D.026. MEETING BY TELECONFERENCE. (a) Notwithstanding Chapter 551, Government Code, or any other law, the research committee may hold an open or closed meeting by telephone conference call, videoconference, or other similar telecommunication method if:

(1) notice is given for the meeting as for other meetings;

(2) the notice specifies a location for the meeting at which the public may attend;

(3) each part of the meeting that is required to be open to the public is audible to the public at the location specified in the notice of the meeting; and

(4) the meeting is recorded by electronic or other means and the recording of each portion of the meeting that is required to be open to the public is made available to the public.

(b) A member of the research committee may participate by telephone conference call, videoconference, or other similar telecommunication method in a research committee meeting at which other members are physically present and may vote.

Added by Acts 2013, 83rd Leg., R.S., Ch. 459 (S.B. 916), Sec. 4, eff. June 14, 2013.

TITLE 4. AGRICULTURAL ORGANIZATIONS
CHAPTER 51. FARMERS' COOPERATIVE SOCIETIES

Sec. 51.001. DEFINITION. In this chapter, "society" means a farmers' cooperative society incorporated under this chapter.

Acts 1981, 67th Leg., p. 1097, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.002. APPLICATION OF GENERAL CORPORATION LAWS. The general corporation laws of the state govern societies unless those laws conflict with this chapter.

Acts 1981, 67th Leg., p. 1097, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.003. PURPOSE. A society may be organized to enable its members to cooperate with each other for the purposes authorized by this chapter.

Acts 1981, 67th Leg., p. 1097, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.004. POWERS. (a) A society may:

(1) borrow money and discount notes, not to exceed a total amount equal to five times its working capital;

(2) lend money to its members, on terms and with security as provided by its bylaws;

(3) act as an agent for its members in selling the members' agricultural products and in purchasing machinery and supplies for its members, including fire, livestock, hail, cyclone, and storm insurance;

(4) own and operate machinery and tools necessary to produce, harvest and prepare for market farm and ranch products;

(5) exercise any of the powers granted to cooperative marketing associations under Section 52.013 of this code; and

(6) deliver money to a scholarship fund for rural students.

(b) To be eligible to purchase insurance for its members, a society must be appointed and licensed as an agent of the insurance company from which the insurance is to be purchased. Commissions received by the society from the purchase of insurance for its members are corporate funds.

(c) A society may not lend money or act as an agent for any person other than a member of the society.

(d) Societies may join to establish and maintain joint agencies to accomplish the purposes for which they were incorporated.

Acts 1981, 67th Leg., p. 1097, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1997, 75th Leg., ch. 904, Sec. 2, eff. Sept. 1, 1997.

Sec. 51.005. ASSETS. A society shall have cash, notes acceptable to its directors, or other property, the combined value of which is $500 or more.

Acts 1981, 67th Leg., p. 1098, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.006. AREA OF OPERATION. A society shall confine its activities and business operation to the community in which it is located. Its activities and business operation may not extend beyond the territory surrounding the town, village, or city designated as the society's place of business.

Acts 1981, 67th Leg., p. 1098, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.007. NONPROFIT CORPORATION; DIVISION OF PROFITS. (a) A society is a cooperative and a nonprofit corporation.

(b) A society, on approval of its directors in accordance with its bylaws, may:

(1) transfer its profits to its surplus fund; or

(2) divide its profits among its members, in proportion to each member's cash contribution to the society's working capital and patronage to the society.

Acts 1981, 67th Leg., p. 1098, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.008. INCORPORATORS. To be eligible to incorporate under this chapter, a person must be engaged in agricultural pursuits.

Acts 1981, 67th Leg., p. 1098, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.009. ARTICLES OF INCORPORATION. (a) The incorporators shall prepare articles of incorporation under the general corporation laws of the state and shall deliver the articles to the attorney general for approval.

(b) After the attorney general has approved the articles, the incorporators shall file them with the secretary of state under the general corporation laws of the state.

(c) The society shall file with the county clerk a certified copy of the articles in accordance with Section 51.011 of this code.

Acts 1981, 67th Leg., p. 1098, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.010. BYLAWS AND AMENDMENTS TO ARTICLES OF INCORPORATION. (a) Each member of a society shall sign the bylaws of the society.

(b) A society shall obtain the approval of its bylaws and amendments to its articles of incorporation from the attorney general. After obtaining that approval, the society shall file the bylaws or amendments with the secretary of state.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.011. COPIES OF ARTICLES, AMENDMENTS, AND BYLAWS; FILING WITH COUNTY CLERK. (a) After filing and recording the articles of incorporation, an amendment to the articles, or bylaws, the secretary of state shall issue to a society two certified copies of the instrument.

(b) The society shall keep one certified copy of its articles, amendments to the articles, and bylaws in its files.

(c) The society shall file with the county clerk of the county in which the society is located a certified copy of the articles, amendments to the articles, and bylaws. The county clerk shall keep those copies for inspection by interested persons but is not required to record them.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.012. MEMBERSHIP. (a) Membership in a society is limited to persons in the community in which the society is located who are engaged in agricultural pursuits.

(b) A person may become a member of a society only if the person is chosen to be a member by:

(1) the incorporators at the time of incorporation; or

(2) the board of directors under rules prescribed by the corporation's bylaws.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.013. VOTING. Each member of a society has one vote in the management of the society.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.014. MEMBERSHIP CERTIFICATES. (a) If a subscriber for membership certificates gives notes for the certificates, a society may not issue the certificates until the notes have been paid in full.

(b) A subscriber who has not paid for the certificates in full is entitled to vote in the management of the society and may borrow from the society in accordance with the society's bylaws.

(c) A subscriber who has not paid for the certificates in full may not receive dividends from the society or share in a distribution of any of its assets.

(d) Membership certificates may not be transferred.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.015. NOTES AS SUBSCRIPTION CONTRACTS. Notes given for membership certificates of a society are valid subscription contracts and are the property of the society.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.016. LIABILITY OF MEMBERS. (a) Except as provided by this section, a member of a society is not liable to the society or its creditors for an amount that exceeds the amount unpaid on the member's membership certificates. When the member pays for the certificates in full, the member's liability ceases.

(b) A society, by clear provisions of its bylaws, may provide that:

(1) each member is liable for an amount, in addition to that provided by Subsection (a) of this section, equal to the price paid for the membership certificates owned by the member and payable on assessment of the board of directors for payment of the society's obligations; or

(2) each member may waive the right to claim personal

property exempt from seizure for the member's obligations to the society.

Acts 1981, 67th Leg., p. 1099, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.017. WITHDRAWAL. (a) A member of a society is entitled to withdraw from the society under rules prescribed by the society's bylaws.

(b) If a member withdraws, the society may return to the member money in an amount equal to the value of the member's contribution to the society's working capital.

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.018. SUSPENSION; EXPULSION. (a) As prescribed by the society's bylaws, a society may suspend or expel a member for misconduct.

(b) If a member is expelled, the society shall return to the member, at a time provided by its bylaws, money in an amount equal to the value of the member's contribution to the society's working capital.

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.019. CONTRIBUTORS. A person who is not engaged in agricultural pursuits may contribute to a society. The amount of the contribution may not exceed one-third of the outstanding working capital of the society.

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.020. FORMS. (a) The attorney general shall prepare and file with the secretary of state forms for the following documents of a society:

(1) articles of incorporation;

(2) amendments of the articles;

(3) bylaws;

(4) rules of the society;

(5) annual reports of the society to its members;

(6) annual reports of the society to the secretary of state; and

(7) any other forms necessary to make this chapter effective.

(b) The secretary of state shall cause the forms and copies of this chapter to be published and distributed to citizens of the state who are interested.

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.021. RESTRICTION ON USE OF PUBLIC MONEY FOR INCORPORATION. Public money appropriated to a department of state government or a state institution may not be used in organizing a society.

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.022. NAME. The name of a society must contain the words, "Farmers' Cooperative Society."

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.023. FEES. (a) The secretary of state shall charge fees for filing articles of incorporation or amendments in accordance with this section.

(b) The fee for filing articles of incorporation is $10.

(c) The fee for filing an amendment to the articles of incorporation is $25.

Acts 1981, 67th Leg., p. 1100, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4283, ch. 682, Sec. 4, eff. Sept. 1, 1983.

Sec. 51.024. REPORT. (a) A society shall annually file with the secretary of state a report that shows the condition of its

affairs.

(b) The report shall be made on a form that is available to the society under Section 51.020 of this code.

Acts 1981, 67th Leg., p. 1101, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 51.025. EXEMPTION FROM FRANCHISE TAX. A society is not required to pay any annual franchise tax, except that a society is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if exempted by that chapter.

Acts 1981, 67th Leg., p. 1101, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2785, ch. 752, Sec. 15(a), eff. Jan. 1, 1982.

CHAPTER 52. COOPERATIVE MARKETING ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. POLICY. The purpose of this chapter is:

(1) to promote and encourage intelligent and orderly production, cultivation, and care of citrus groves and marketing of agricultural products through cooperation;

(2) to eliminate speculation and waste in the production and marketing of agricultural products;

(3) to make production and distribution of agricultural products as direct as effectively possible between the producer and consumer; and

(4) to stabilize the production and marketing of agricultural products.

Acts 1981, 67th Leg., p. 1102, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.002. DEFINITIONS. In this chapter:

(1) "Agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, and bee products and any farm and ranch product.

(2) "Marketing association" means an association organized under this chapter.

(3) "Member" includes a member of an association organized

under this chapter without capital stock and a holder of common stock of an association organized under this chapter with capital stock.

Acts 1981, 67th Leg., p. 1103, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.003. NONPROFIT ORGANIZATION. Because a marketing association is organized not to make money for itself or for its members as individuals but only to make money for its members as producers, the association is considered to be a nonprofit organization.

Acts 1981, 67th Leg., p. 1103, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.004. APPLICATION OF GENERAL CORPORATION LAWS. The general corporation laws of the state apply to marketing associations unless those laws conflict with this chapter.

Acts 1981, 67th Leg., p. 1103, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.005. ASSOCIATIONS NOT IN RESTRAINT OF TRADE. (a) A marketing association is not a combination in restraint of trade or an illegal monopoly.

(b) Organizing under this chapter is not an attempt to lessen competition or to fix prices arbitrarily.

(c) Marketing contracts or agreements authorized by this chapter are not illegal or in restraint of trade.

Acts 1981, 67th Leg., p. 1103, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.006. DURATION OF EXISTENCE. Each association incorporated and organized under this chapter after August 1, 1987, has perpetual existence unless a limited duration is provided for and stated in its charter or articles of incorporation or in an amendment to either of the documents. Each association incorporated and organized under this chapter that is in existence on August 1, 1987, has perpetual existence unless a limited duration is provided for and stated in an amendment to its charter or articles of incorporation.

Added by Acts 1987, 70th Leg., ch. 695, Sec. 1, eff. Aug. 31, 1987.

SUBCHAPTER B. PURPOSE AND POWERS

Sec. 52.011. PURPOSES. (a) A marketing association may be incorporated to engage in any activity connected with:

(1) the production, cultivation, and care of citrus groves;

(2) the harvesting, preserving, drying, processing, canning, storing, handling, shipping, marketing, selling, or use of agricultural products of its members;

(3) the manufacturing or marketing of by-products of its members' agricultural products;

(4) the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or

(5) the financing of any of the activities authorized by this section.

(b) The activities authorized by Subsection (a) of this section may extend to nonmembers, to the production, cultivation, and care of lands owned or cultivated by nonmembers, and to products of nonmembers as limited by Section 52.012 of this code.

Acts 1981, 67th Leg., p. 1103, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.012. RESTRICTIONS. (a) A marketing association shall be operated for the mutual benefit of its members, as producers, and shall conform to one or both of the following requirements:

(1) a member of the association may not have more than one vote based on the member's ownership of stock or membership capital in the association; or

(2) the association may not pay dividends on stock or membership capital in excess of eight percent a year.

(b) A marketing association may deal in the products and supplies of nonmembers. However, except as provided by Subsection (c) of this section, an association is restricted to an amount of nonmember products and supplies that is not greater than the value of the products that it handles for its members.

(c) A marketing association that is organized primarily for the production, cultivation, and care of citrus groves or for the processing and marketing of citrus products and for which the

principal offices are located in a county in which not less than 500 acres of land are planted in producing citrus groves may deal in the products and supplies of nonmembers to an amount that is greater than the value of the products that it handles for its members for the 10-year period immediately following a natural disaster, such as a severe freeze, during which the citrus crops of the association's membership are substantially reduced as a direct result of the disaster.

Acts 1981, 67th Leg., p. 1104, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 575, Sec. 1, eff. June 12, 1985; Acts 1993, 73rd Leg., ch. 147, Sec. 1, eff. Aug. 30, 1993.

Sec. 52.013. GENERAL POWERS. A marketing association may:

(1) engage in any activity connected with:

(A) the production, cultivation, and care of citrus groves;

(B) the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or use of any agricultural products produced or delivered to it by its members;

(C) the production, manufacturing, or marketing of the by-products of those agricultural products;

(D) the purchase, hiring, or use by its members of supplies, machinery, or equipment; and

(E) the financing of an activity enumerated by Paragraphs (A) through (D) of this subdivision;

(2) borrow money and make advances to its members;

(3) act as an agent or representative of any member in an activity authorized by Subdivision (1) or (2) of this section;

(4) acquire, hold, own, exercise all rights of ownership in, sell, transfer, or pledge shares of capital stocks or bonds of a corporation or association, including a bank for cooperatives organized under the Farm Credit Act of 1933, engaged in an activity related to that of the association incorporated under this chapter or engaged in the handling or marketing of a product handled by the association;

(5) establish reserves and invest the money in those reserves in bonds or other property as provided by the association's bylaws;

(6) buy, hold, and exercise all privileges of ownership over real or personal property that is determined by the association to be necessary or convenient for, or incidental to, conducting and operating its business;

(7) perform, in or outside this state, acts that are necessary, suitable, or proper to accomplish the purposes and objectives permitted by this section or that are conducive to or expedient for the interest or benefit of the association, and may contract for the performance of those acts;

(8) possess and exercise, in or outside this state, all powers, rights, and privileges necessary for or incidental to the purposes for which the association is organized or the activities in which it is engaged;

(9) exercise the rights, powers, and privileges that are granted by the laws of the state to general corporations and that are not inconsistent with this chapter; and

(10) deliver money to a scholarship fund for rural students.

Acts 1981, 67th Leg., p. 1104, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1997, 75th Leg., ch. 904, Sec. 3, eff. Sept. 1, 1997.

Sec. 52.014. INTEREST IN OTHER CORPORATIONS. (a) A marketing association may organize, operate, own, control, have an interest in, own stock of, or be a member of any other corporation, organized with or without capital stock, that is engaged in preserving, drying, pressing, canning, packing, storing, handling, shipping, using, manufacturing, marketing, or selling agricultural products handled by the association or the by-products of those products.

(b) If a corporation described by Subsection (a) of this section is a warehousing corporation, it may issue a legal warehouse receipt to the association or to any person. The receipt is adequate collateral limited to the current value of the commodity represented by the receipt. If a warehouse is licensed or licensed and bonded under the laws of this state or of the United States, its warehouse receipts may not be challenged or discriminated against because of the association's total or partial ownership or control of it.

Acts 1981, 67th Leg., p. 1105, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.015. CONTRACTS AND AGREEMENTS WITH OTHER ASSOCIATIONS. (a) A marketing association, by resolution of its board of directors, may make all necessary stipulations, agreements, contracts, and arrangements with any other cooperative corporation or association formed in this or any other state for the cooperative and more economical conduct of its business or a part of its business.

(b) Two or more marketing associations, jointly or separately, may use the same methods and agencies to conduct their respective businesses.

Acts 1981, 67th Leg., p. 1105, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.016. MARKETING CONTRACT. (a) A marketing association may execute a marketing contract with its members requiring the members to sell, for a period not exceeding 10 years, all or a specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association.

(b) The contract may provide that the association may:

(1) sell or resell its members' products with or without taking title to the products; and

(2) pay to its members the resale price less necessary expenses.

(c) The expenses that may be deducted from the resale price under Subsection (b) of this section include:

(1) sales, overhead, and other expenses;

(2) interest on preferred stock, not exceeding eight percent a year;

(3) interest on common stock, not exceeding eight percent a year; and

(4) reserves, including reserves for redeeming any stock issued.

(d) A marketing association's bylaws and marketing contract may:

(1) fix as liquidated damages specific amounts to be paid by a member if the member breaches the marketing contract regarding the sale, delivery, or withholding of products; and

(2) provide that the member will pay all costs, premiums for bonds, expenses, and fees if the association brings an action on

the contract.

Acts 1981, 67th Leg., p. 1105, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. INCORPORATION

Sec. 52.031. INCORPORATORS. Five or more persons who produce agricultural products or three or more marketing associations may form a marketing association under this chapter.

Acts 1981, 67th Leg., p. 1106, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.032. PRELIMINARY INVESTIGATION. (a) Every group of persons considering the organization of a marketing association is urged to communicate with the department.

(b) On request, the department shall inform the group of:

(1) the results of a survey of the marketing conditions affecting the commodities to be handled by the proposed association; and

(2) the probability of the association's success as determined from those results.

Acts 1981, 67th Leg., p. 1106, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.033. EXECUTION OF ARTICLES OF INCORPORATION. (a) Each marketing association shall prepare and file articles of incorporation signed by each incorporator.

(b) One of the incorporators shall acknowledge the articles before an officer authorized by the laws of the state to take and certify acknowledgments of deeds and conveyances.

Acts 1981, 67th Leg., p. 1106, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.034. CONTENTS OF ARTICLES OF INCORPORATION. (a) The articles of incorporation must state:

(1) the name of the association;

(2) the term of existence, if it is limited;

(3) the purpose for which the association is formed;

(4) the location and street address of the association's principal place of business;

(5) the number of directors; and

(6) the term of office of each director.

(b) If the association is organized without capital stock, the articles must state whether property rights and interests of each member are equal or unequal, and if unequal, the general rules applicable to all members by which the property rights and interests of each are determined and fixed.

(c) If the association is organized with capital stock, the articles must state:

(1) the amount of capital stock authorized;

(2) the number of shares authorized;

(3) the par value of the shares; and

(4) if preferred stock is to be issued, the number of shares of common stock, the number of shares of preferred stock, the rights, preferences, and privileges granted, and the conditions under which the association may redeem the preferred stock.

Acts 1981, 67th Leg., p. 1106, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2605, ch. 693, Sec. 24, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 695, Sec. 2, eff. Aug. 31, 1987.

Sec. 52.035. FILING OF ARTICLES OF INCORPORATION. (a) The incorporators shall file the articles of incorporation in accordance with the general corporation laws of the state.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(5), eff. September 1, 2009.

(c) If the association is formed with capital stock, the incorporators are not required to obtain subscriptions or payment for any part of the association's capital stock as a prerequisite of filing the articles.

Acts 1981, 67th Leg., p. 1106, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(5), eff. September 1, 2009.

Sec. 52.036. EFFECT OF FILING ARTICLES OF INCORPORATION. When

the articles of incorporation are filed with the secretary of state, all courts shall receive the articles or a certified copy of the articles as prima facie evidence of:

(1) facts stated in the articles; and

(2) compliance with requirements for incorporation under this chapter.

Acts 1981, 67th Leg., p. 1107, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.037. AMENDMENT OF ARTICLES OF INCORPORATION. (a) A marketing association may amend the articles of incorporation at any regular meeting of the association or at a special meeting for that purpose, at which at least 10 percent of the members are voting in person or by proxy or mail.

(b) An amendment must first be approved by two-thirds of the directors and then, except as provided by Subsection (c) of this section, adopted by:

(1) a simple majority vote when 50 percent or more of the members vote in person or by proxy or mail;

(2) a two-thirds majority vote when less than 50 percent but 25 percent or more of the members vote in person or by proxy or mail; or

(3) a three-fourths majority vote when less than 25 percent but 10 percent or more of the members vote in person or by proxy or mail.

(c) An amendment of the rules required by Section 52.034(b) of this code for determining the property rights and interests of members of a marketing association formed without capital stock may be adopted by a vote or written consent of two-thirds of the members who are present at a meeting of the association at which a quorum is present or who are voting by proxy or mail as prescribed by an association bylaw.

(d) After an amendment is adopted, the amendment shall be filed in accordance with the general corporation laws of the state.

Acts 1981, 67th Leg., p. 1107, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1550, ch. 296, Sec. 1, eff. June 14, 1983.

Sec. 52.038. EXISTING CORPORATIONS AND ASSOCIATIONS. Any corporation or association organized under prior law before March 1, 1921, may elect, by a majority vote of its members or stockholders, to adopt this chapter and become subject to it by:

(1) adopting the restrictions provided by this chapter; and

(2) executing, in duplicate on forms supplied by the secretary of state, an instrument, signed and acknowledged by its directors, stating that the entity, by a majority vote of its members or stockholders, has decided to accept the benefits of and be bound by this chapter.

Acts 1981, 67th Leg., p. 1107, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.08, eff. September 1, 2009.

SUBCHAPTER D. BYLAWS

Sec. 52.051. ADOPTION. (a) A marketing association shall adopt bylaws before the 31st day after the day on which the articles of incorporation are filed with the secretary of state.

(b) The initial bylaws may be adopted by a two-thirds vote of the incorporating directors and then:

(1) a simple majority vote when 50 percent or more of the members vote in person or by proxy or mail;

(2) a two-thirds majority vote when less than 50 percent but 25 percent or more of the members vote in person or by proxy or mail; or

(3) a three-fourths majority vote when less than 25 percent but 10 percent or more of the members vote in person or by proxy or mail.

Acts 1981, 67th Leg., p. 1107, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 1551, ch. 296, Sec. 2, eff. June 14, 1983.

Sec. 52.052. CONTENTS. The bylaws may provide for one or more of the following:

(1) the time, place, and manner of calling and conducting meetings of the association;

(2) the number and qualifications of the members;

(3) the number of members constituting a quorum;

(4) the right of members to vote by proxy, mail, or both and the conditions, method, and effects of the vote;

(5) the method by which a member that is an association may cast its vote;

(6) the number of directors constituting a quorum;

(7) the qualifications, compensation, duties, and terms of directors and officers;

(8) the time of the election of directors and officers and the method of giving notice of the election;

(9) the penalties for violations of the bylaws;

(10) the amount of entrance, organization, and membership fees, if any, the method of collecting the fees, and the purposes for which the association must use the fees;

(11) the amount, if any, that each member must pay for the association's cost of conducting business;

(12) the amount that each member is required to pay for services rendered to the member by the association, the time of payment, and the method of collecting the payment;

(13) the marketing contract between the association and its members;

(14) the requirements for ownership of common stock;

(15) the time and method by which a member may withdraw from the association or may assign or transfer common stock;

(16) the method of assignment and transfer of a member's interest or shares of common stock;

(17) the time and conditions on which membership ceases;

(18) the automatic suspension of a member's rights if the member ceases to be eligible for membership;

(19) the method and effect of expulsion of a member;

(20) the purchase by the association of a member's interest on the death, withdrawal, or expulsion of the member, on forfeiture of a membership, or at the option of the association; and

(21) the method by which the value of a member's interest is determined by conclusive appraisal by the board of directors.

Acts 1981, 67th Leg., p. 1108, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. MEMBERSHIP CERTIFICATES AND STOCK

Sec. 52.061. STOCK. A marketing association may be organized with or without capital stock.

Acts 1981, 67th Leg., p. 1108, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.062. ISSUANCE OF MEMBERSHIP CERTIFICATES. When a member of a marketing association organized without capital stock has paid the membership fee in full, the association shall issue to the member a certificate of membership.

Acts 1981, 67th Leg., p. 1108, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.063. ISSUANCE OF SHARES. (a) Subject to this section, a marketing association organized with capital stock may from time to time sell and issue shares of capital stock in the manner and under the terms prescribed by its bylaws.

(b) A marketing association may issue common stock only to a person who satisfies the membership requirements prescribed by Section 52.081 of this code.

(c) A marketing association may not sell and issue shares of preferred stock to a person who is not a member of the association unless the association first complies with The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(d) A marketing association may not issue shares of stock to a member until the member has fully paid for the shares.

(e) A marketing association may accept promissory notes of members as full or partial payment for stock. The association shall hold the stock as security for payment of the note. The association's retention of the stock does not affect the member's right to vote.

Acts 1981, 67th Leg., p. 1109, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.064. COMMON STOCK. (a) If a marketing association consists of fewer than 20 stockholders, a stockholder may not own more than one share of the marketing association's issued common stock. If the marketing association consists of 20 or more

stockholders, a stockholder may not own more than one-twentieth of a marketing association's issued common stock. A marketing association with more than 20 stockholders, by its bylaws, may limit the amount of common stock that one stockholder may own to an amount less than one-twentieth of the issued common stock.

(b) At any time, except when the association's debts exceed 50 percent of its assets, a marketing association may purchase its common stock at the book value conclusively determined by its board of directors and pay cash for the stock within one year thereafter.

(c) A person may not transfer common stock of a marketing association to a person who does not produce agricultural products handled by the association. The association shall state this restriction in its bylaws and shall print the restriction on each common stock certificate.

Acts 1981, 67th Leg., p. 1109, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1551, ch. 296, Sec. 3, eff. June 14, 1983.

Sec. 52.065. PREFERRED STOCK. (a) A marketing association organized with capital stock may issue preferred stock with or without the right to vote.

(b) The association may redeem preferred stock on conditions provided by the association's articles of incorporation and printed on the face of the stock certificates.

Acts 1981, 67th Leg., p. 1109, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.066. STOCK ISSUED ON PURCHASE OF PROPERTY. (a) If a marketing association organized with capital stock purchases stock, property, or an interest in property, it may discharge its obligations, in whole or part, by exchanging for its acquisition shares of preferred stock the par value of which equals the value of the purchased property as determined by the board of directors.

(b) In the transaction described by Subsection (a) of this section, the transfer of the purchased property to the association is considered payment in cash for the issued shares of preferred stock.

Acts 1981, 67th Leg., p. 1109, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. MEMBERS

Sec. 52.081. MEMBERSHIP. (a) Membership of a marketing association is limited to persons who produce agricultural products handled by or through the association, including the lessees and tenants of land used to produce those products and any lessors and landlords who receive as rent part of the crop raised on the leased land. A marketing association may be a member of another marketing association.

(b) A marketing association shall admit members under terms and conditions prescribed in its bylaws.

(c) If a member of a marketing association organized without capital stock is not a natural person, the member may be represented by any individual, an associate officer, or one of its members, authorized in writing to act for it.

Acts 1981, 67th Leg., p. 1110, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.082. NEW MEMBERS. (a) A marketing association organized without capital stock may admit new members.

(b) If the property rights of the association's members are unequal, a new member is entitled to share the property of the association with the old members in accordance with the general rules stated in the articles of incorporation.

Acts 1981, 67th Leg., p. 1110, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.083. MEETINGS. (a) As prescribed by its bylaws, a marketing association annually shall hold one or more regular meetings of its members.

(b) The board of directors may call a special meeting of the association at any time.

(c) If, at any time, 10 percent or more of the members file with the board of directors a petition demanding a special meeting of the association and stating the specific business to be considered at the meeting, the board shall call the meeting.

Acts 1981, 67th Leg., p. 1110, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.084. NOTICE OF MEETINGS. Not later than the 10th day before the day of a meeting of a marketing association, the association shall:

(1) mail to each member notice of the meeting and a statement of the purpose of the meeting; or

(2) if the bylaws so provide, publish notice of the meeting in a newspaper of general circulation in the area in which the association's principal place of business is located.

Acts 1981, 67th Leg., p. 1110, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.085. VOTING. (a) Except as provided by Subsection (b) of this section, a member of a marketing association is entitled to one vote.

(b) A marketing association may provide in its articles of incorporation or bylaws for a member association or group to have more than one vote if the association providing for the vote:

(1) is organized primarily for the production, cultivation, and care of citrus groves or for processing and marketing citrus products and:

(A) has its principal office in a county that has at least 500 acres of land planted in citrus groves; and

(B) includes as members one or more associations or groups organized on a cooperative basis; or

(2) is organized primarily for the harvesting, preserving, drying, processing, canning, storing, handling, shipping, marketing, selling, or use of grain or grain-related products.

(c) A marketing association that provides for a member association or group to have more than one vote under Subsection (b) shall comply with Section 52.012(a)(2).

(d) In accordance with a bylaw adopted under Section 52.052 of this code, a marketing association may provide for its members to vote by proxy or by mail.

Acts 1981, 67th Leg., p. 1110, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.11, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 339, Sec. 1, eff. May 29, 1999.

Sec. 52.086. TERMINATION OR SUSPENSION OF MEMBERSHIP. In accordance with its articles of incorporation or a bylaw adopted under Section 52.052 of this code, a marketing association may provide for the termination or suspension of membership in the association and for the purchase of a member's common or preferred stock, if any, and all other property interest in the association.

Acts 1981, 67th Leg., p. 1111, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1551, ch. 296, Sec. 4, eff. June 14, 1983.

Sec. 52.087. LIABILITY OF MEMBERS. Except for debts contracted with the association, a member of a marketing association is not liable for the debts of the association in an amount that exceeds the amount that is unpaid on the member's membership fee or subscription to capital stock, including any unpaid balance on promissory notes given in payment for the stock.

Acts 1981, 67th Leg., p. 1111, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. ADMINISTRATION

Sec. 52.101. BOARD OF DIRECTORS. (a) A board of directors shall manage a marketing association.

(b) The board shall be composed of five or more directors who are elected by the members of the association.

(c) Except as provided by Subsection (d) of this section, a person must be a member of the association to be eligible to serve as a director.

(d) As prescribed by the bylaws of the association that is holding the meeting, a marketing association that is a member of the association may designate any of its members to vote on behalf of the member association or to serve as a director of the association holding the meeting.

Acts 1981, 67th Leg., p. 1111, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.102. OFFICERS. (a) The directors shall elect:

(1) a president or chairman;

(2) one or more vice-presidents or vice-chairmen;

(3) a secretary; and

(4) a treasurer.

(b) To be eligible to serve as president, chairman, vice-president, or vice-chairman, a person must be a director.

(c) The directors may combine the offices of secretary and treasurer as secretary-treasurer.

(d) A bank or depository may serve as treasurer but is not considered to be an officer. If a bank or depository serves as treasurer, the secretary shall perform the usual accounting duties of the treasurer except that the secretary may deposit money only as authorized by the board of directors.

Acts 1981, 67th Leg., p. 1111, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.103. REMOVAL OF OFFICER OR DIRECTOR. (a) Except as provided by Subsection (f) of this section, a member of a marketing association may initiate removal of an officer or director by filing in writing with the association's secretary:

(1) the charges; and

(2) a petition that is signed by 10 percent of the members and that requests the removal of the officer or director in question.

(b) The members of the association shall vote on the removal at the next regular or special meeting of the association.

(c) Before the meeting the association, in writing, shall inform the officer or director of the charges.

(d) At the meeting the association shall give the officer or director and the person bringing the charges an opportunity to be heard in person or by counsel and to present witnesses.

(e) The association, by a majority vote, may remove the officer or director and fill the vacancy.

(f) If an association's bylaws provide for election of directors by districts with primary elections in each district, the petition for removal of a director must state the charges and must be signed by 20 percent of the members residing in the district from which the director was elected. The board of directors shall call a special meeting of the members residing in that district to consider removal of the director. The members in that district, by a majority vote, may remove the director.

Acts 1981, 67th Leg., p. 1112, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.104. BOND. (a) Each officer, employee, or agent who handles money or property of a marketing association or any money or property that is under the control or in possession of a marketing association shall execute and deliver to the association an indemnity bond that indemnifies the association and its members against any fraudulent, dishonest, or unlawful act by the bonded person and other acts as provided by the association's bylaws.

(b) If the officers and directors of a marketing association fail to require a person to execute a bond as required by Subsection (a) of this section, each officer and director is personally liable for all losses that would have been recovered under the bond if the person had been bonded.

Acts 1981, 67th Leg., p. 1112, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.105. REFERENDUM. (a) On demand of one-third of the board of directors, the board shall refer to the entire membership of a marketing association for decision at the next special or regular meeting any matter that has been approved or passed by the board.

(b) The association may call a special meeting to consider the referred matter.

Acts 1981, 67th Leg., p. 1112, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER H. FOREIGN COOPERATIVES

Sec. 52.121. FOREIGN COOPERATIVE CONSIDERED MARKETING ASSOCIATION. For the purposes of this chapter, a corporation or association organized, with or without capital stock, under a cooperative marketing act of another state or of the United States is considered to be a marketing association if the corporation or association:

(1) satisfies the requirements of Section 52.012 of this chapter; and

(2) is composed of persons who, as farmers, planters, ranchers, dairymen, or nut or fruit growers, produce agricultural products and who act collectively to process, prepare, handle, and

market, in interstate and foreign commerce, the members' products.

Acts 1981, 67th Leg., p. 1112, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.122. PERMITS TO DO BUSINESS. (a) Any cooperative marketing association incorporated under the laws of another state may apply for and be granted a permit to do business in this state. The association shall pay as filing fee the amount required of domestic corporations organized for a similar purpose.

(b) A marketing association is not required to have all or part of a paid-up capital to be entitled to a permit under Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1113, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER I. REMEDIES

Sec. 52.131. BREACH OR THREATENED BREACH OF MARKETING CONTRACT. (a) If a member breaches or threatens to breach a marketing contract, the marketing association may sue and, if successful, is entitled to:

(1) an injunction to prevent further breach of the contract; and

(2) a decree of specific performance of the contract.

(b) Pending the adjudication of an action filed under Subsection (a) of this section, the association is entitled to a temporary restraining order and preliminary injunction against the member if the association files:

(1) a verified complaint showing the breach or threatened breach; and

(2) sufficient bond.

Acts 1981, 67th Leg., p. 1113, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.132. INDUCED BREACH OF MARKETING CONTRACT; FALSE REPORTS. In a civil suit for damages, a person is liable to a marketing association for an amount equal to three times the amount of actual damages proven for each offense if the person, or where the person is a corporation, if an officer or employee of the

corporation:

(1) knowingly induces or attempts to induce a member of the association to breach the member's marketing contract with the association; or

(2) maliciously and knowingly spreads false reports concerning the finances or management of the association.

Acts 1981, 67th Leg., p. 1113, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER J. FEES AND REPORTS

Sec. 52.151. TAX EXEMPTIONS. A marketing association is exempt from all franchise or license taxes, except that a marketing association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if exempted by that chapter.

Acts 1981, 67th Leg., p. 1113, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1981, 67th Leg., p. 2785, ch. 752, Sec. 15(b), eff. Jan. 1, 1982; Acts 1995, 74th Leg., ch. 419, Sec. 2.20, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.09, eff. September 1, 2009.

CHAPTER 54. MUTUAL LOAN CORPORATIONS

Sec. 54.001. PURPOSE. A corporation may be formed under this chapter to aid shareholders of its common stock in:

(1) producing, or producing and marketing, staple agricultural products; or

(2) acquiring, raising, breeding, fattening, or marketing livestock.

Acts 1981, 67th Leg., p. 1119, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.002. POWERS. (a) A corporation formed under this chapter may make loans to shareholders of its common stock for:

(1) the production, or production and marketing, of staple agricultural products;

(2) the acquisition, raising, breeding, fattening, or

marketing of livestock; or

(3) the purchase of capital stock of the corporation.

(b) To obtain money for loans, the corporation may purchase, sell, endorse, or discount notes of the shareholders of its common stock if the notes are secured by:

(1) warehouse receipts or shipping documents for the shareholder's agricultural products;

(2) chattel mortgages on the livestock or crops of the shareholder; or

(3) other acceptable security.

(c) By endorsing a note under Subsection (b) of this section, a corporation becomes liable as a principal maker of the note.

Acts 1981, 67th Leg., p. 1119, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.003. INCORPORATORS. Ten or more persons, five of whom are citizens of this state, may form a corporation under this chapter.

Acts 1981, 67th Leg., p. 1119, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.004. CAPITAL STOCK REQUIREMENT FOR INCORPORATION. At the time of filing the articles of incorporation, a corporation formed under this chapter must have fully paid-up capital stock of $10,000 or more.

Acts 1981, 67th Leg., p. 1119, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.005. CAPITAL STOCK. (a) The incorporators or the board of directors of a corporation formed under this chapter may divide the corporation's capital stock into preferred and common stock.

(b) If preferred stock is to be issued, the articles of incorporation must state:

(1) the amount of preferred stock that the corporation may issue;

(2) the conditions and procedure for the payment of dividends on preferred stock;

(3) the rate at which preferred stock dividends are paid; and

(4) the conditions and procedure for the retirement of preferred and common stock.

(c) A corporation may not pay dividends on its common stock until it has fully paid dividends on its preferred stock at the rate provided by its articles of incorporation.

Acts 1981, 67th Leg., p. 1120, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.006. INVESTMENT BY OTHER CORPORATIONS. After obtaining the approval of the banking commissioner, any corporation organized under the laws of this state other than a savings bank may invest any part of its money in the preferred stock of a corporation formed under this chapter.

Acts 1981, 67th Leg., p. 1120, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.007. INVESTMENT OF CAPITAL. At all times, a corporation formed under this chapter shall have $10,000 or more of its capital invested in securities approved by law for investment by savings banks.

Acts 1981, 67th Leg., p. 1120, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.008. RATIO OF CAPITAL TO LOANS. (a) A corporation formed under this chapter shall automatically increase its capital stock at the rate of five percent of the amount of loans made by the corporation to shareholders of its common stock.

(b) The corporation's articles of incorporation and bylaws must state the requirement of Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1120, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.009. LOANS AND DISCOUNTS. (a) Except as provided by this subsection, each applicant for a loan or discount by a corporation formed under this chapter shall become a subscriber of

the corporation's common stock in an amount equal to or greater than five percent of the amount of the loan or discount for which the person has applied. The board of directors may waive this requirement if the applicant owns a sufficient amount of stock at the time of application.

(b) An applicant shall pay for the stock required to be purchased under Subsection (a) of this section at or before the time that the loan is closed or the discount is granted.

(c) The requirements of Subsections (a) and (b) of this section must be stated in the articles of incorporation of a corporation formed under this chapter.

(d) A corporation formed under this chapter may not make loans in excess of an amount equal to 20 times its unimpaired capital stock represented by the part of its capital stock that is increased in accordance with Section 54.008 of this code.

(e) A corporation formed under this chapter may not charge a shareholder of its common stock interest on a loan at a rate that is greater than the rate of discount set by the Farm Credit Administration for discounts made by the federal intermediate credit banks plus three percent a year.

Acts 1981, 67th Leg., p. 1120, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.010. LIABILITY OF SHAREHOLDER. (a) Except for debts contracted between a corporation formed under this chapter and a shareholder, a shareholder of common or preferred stock is not liable for the debts, contracts, or engagements of the corporation in an amount greater than the par value of the stock owned by the shareholder.

(b) Both common and preferred stock are nonassessable.

Acts 1981, 67th Leg., p. 1121, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.011. REPURCHASE OF STOCK. (a) A corporation formed under this chapter may purchase, out of its available funds, any of its outstanding stock.

(b) The corporation shall pay book value for stock purchased under this section, as conclusively determined by the corporation's directors.

(c) A corporation formed under this chapter shall state the provisions of Subsections (a) and (b) of this section in its articles of incorporation.

Acts 1981, 67th Leg., p. 1121, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.012. REPORTS. Before January 11 and July 11 of each year, a corporation formed under this chapter shall file with the secretary of state a report showing:

(1) its financial condition on January 1 and July 1, respectively; and

(2) the amount of outstanding preferred and common stock.

Acts 1981, 67th Leg., p. 1121, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 54.013. EXEMPTION FROM FRANCHISE TAX. Corporations formed under this chapter are not required to pay franchise taxes.

Acts 1981, 67th Leg., p. 1121, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 55. COOPERATIVE CREDIT ASSOCIATIONS

Sec. 55.001. POWERS. An association formed under this chapter may:

(1) borrow money for and lend money to its members;

(2) discount, rediscount, endorse, purchase, or sell notes, bills, or other evidences of indebtedness of its members that may be discounted or rediscounted under the rules prescribed by the Farm Credit Administration; and

(3) exercise the powers authorized by the general corporation laws of this state unless the law granting the power conflicts with this chapter.

Acts 1981, 67th Leg., p. 1121, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.002. INCORPORATORS. (a) Ten or more persons who fulfill the requirements of Subsection (b) of this section may organize a private cooperative credit association.

(b) To be eligible to be an incorporator a person must:

(1) be a citizen of this state; and

(2) be engaged in the production, or production and marketing, of staple agricultural products or in the raising, breeding, feeding, fattening, or marketing of livestock.

Acts 1981, 67th Leg., p. 1122, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.003. ARTICLES OF INCORPORATION. In addition to the requirements prescribed by the general corporation laws of the state, the articles of incorporation of an association formed under this chapter must state that the association may not obtain loans for, make loans to, purchase notes from, or discount notes for a person who is not a member of the association.

Acts 1981, 67th Leg., p. 1122, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.004. CAPITAL STOCK. (a) Except as provided by Subsection (b) of this section, an association may be organized under this chapter with or without capital stock.

(b) If an association formed under this chapter is organized to lend money secured by chattel mortgages on livestock, the association shall be organized with capital stock.

(c) An association formed under this chapter with capital stock automatically shall increase its stock at the rate of 10 percent of the amount of loans or discounts made by the association to its members.

Acts 1981, 67th Leg., p. 1122, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.005. LOANS. (a) Each applicant for a loan or discount by an association formed under this chapter shall become a subscriber to the association's capital stock in an amount equal to 10 percent of the amount of the loan or discount for which application is made.

(b) The applicant shall pay for the stock required to be purchased by Subsection (a) of this section at or before the time that the loan is closed or the discount is granted.

Acts 1981, 67th Leg., p. 1122, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.006. RATIO OF CAPITAL TO LOANS. (a) The total amount of the outstanding loans or discounts of an association formed under this chapter may not exceed an amount equal to 10 times the amount of the association's paid-up unimpaired capital stock.

(b) The articles of incorporation of an association formed under this chapter must state the requirement of Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1122, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.007. REPURCHASE OF STOCK. (a) The board of directors of an association formed under this chapter may authorize the purchase of the association's capital stock at the book value conclusively determined by the board and pay cash for the stock within one year thereafter if:

(1) the liabilities of the association are less than 50 percent of its assets; and

(2) the directors determined that the stock may be purchased without impairment of the association's financial condition.

(b) The board of directors in its discretion may retire pro rata stock held by a member or group of members whose loans have been paid in whole or part.

Acts 1981, 67th Leg., p. 1122, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.008. REPORTS. Before January 11, April 11, July 11, and October 11, each association formed under this chapter with capital stock shall file with the secretary of state:

(1) an accurate report showing the association's financial condition and the amount of outstanding paid-up capital stock on January 1, April 1, July 1, or October 1 preceding the report; and

(2) a fee of $2.50.

Acts 1981, 67th Leg., p. 1123, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.009. FEES. (a) When the articles of incorporation of an association formed under this chapter are filed, the incorporators shall pay to the secretary of state a filing fee of $10.

(b) Each association formed under this chapter without capital stock shall pay an annual license fee of $10.

Acts 1981, 67th Leg., p. 1123, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 55.010. EXEMPTION FROM FRANCHISE TAX. An association formed under this chapter is exempt from all franchise or other license taxes, except that:

(1) an association is not exempt from the annual license fee under Section 55.009 of this code; and

(2) an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if exempted by that chapter.

Acts 1981, 67th Leg., p. 1123, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2786, ch. 752, Sec. 15(c), eff. Jan. 1, 1982.

CHAPTER 56. AGRICULTURAL FINANCE CORPORATIONS

Sec. 56.001. DEFINITIONS. In this chapter:

(1) "Agricultural finance corporation" means a corporation formed under this chapter.

(2) "Ready marketable, staple, nonperishable agricultural products" means agricultural products that:

(A) are commonly dealt in ready markets so that their values are easily and definitely ascertainable and realized on short notice; and

(B) ordinarily do not substantially depreciate in quality during the period of immaturity of the obligations that are secured by or that represent those products.

Acts 1981, 67th Leg., p. 1123, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.002. PURPOSE. An agricultural finance corporation may be organized to deal in:

(1) acceptances and other receipts that are used to aid or

are issued because of the transportation, warehousing, distribution, or financing of ready marketable, staple, nonperishable agricultural products in domestic and foreign trade; and

(2) acceptances of banking corporations not secured by or representing any ready marketable, staple, nonperishable agricultural products.

Acts 1981, 67th Leg., p. 1124, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.003. ASSETS REPRESENTED BY ACCEPTANCES OF BANKING CORPORATIONS. At any time, the total assets of an agricultural finance corporation that are represented by acceptances of banking corporations not secured by or representing ready marketable, staple, nonperishable agricultural products may not exceed an amount equal to 10 percent of the unimpaired capital of the corporation.

Acts 1981, 67th Leg., p. 1124, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.004. CAPITAL STOCK. At all times an agricultural finance corporation shall have authorized capital stock in the amount of $500,000 or more.

Acts 1981, 67th Leg., p. 1124, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.005. INVESTMENT OF CAPITAL. At all times, an agricultural finance corporation shall have one-half or more of its paid-in capital invested in obligations of the United States, this state, or political subdivisions or incorporated cities of this state.

Acts 1981, 67th Leg., p. 1124, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.006. LIMIT OF INDEBTEDNESS. (a) For the purposes of this section, the existing obligations of an agricultural finance corporation include the primary, secondary, fixed, and contingent obligations of the corporation but do not include an obligation for which a liable person has furnished to the corporation funds to pay

the obligation at maturity.

(b) Except as provided by Subsection (c) of this section, an agricultural finance corporation may not enter into a contract of acceptance, guaranty, endorsement, or suretyship if the total of its existing obligations plus its obligations resulting from the contract exceeds an amount equal to five times the total of its unimpaired capital and surplus at the time of the contract.

(c) An agricultural finance corporation may exceed the limit set by Subsection (b) of this section if, before entering into the contract, the corporation obtains written authorization from the banking commissioner to do so. If authorization is obtained, the corporation may not exceed the limit set by the commissioner, and the limit set by the commissioner may not exceed an amount equal to 10 times the total of the corporation's unimpaired capital and surplus at the time of the contract.

(d) Except as provided by Subsection (e) of this section, if a corporation enters into a contract in violation of this section, the contract is unenforceable against the corporation.

(e) This section does not prevent the enforcement of a prohibited obligation by a holder who has acquired the obligation:

(1) in due course;

(2) for value;

(3) before its maturity; and

(4) without notice of its defect.

Acts 1981, 67th Leg., p. 1124, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.007. STOCK OWNERSHIP. (a) Except as otherwise provided by this section, an agricultural finance corporation or any banking corporation or trust company, except a savings bank, may hold stock of:

(1) an agricultural finance corporation; or

(2) a corporation that is chartered under the laws of the United States or a state of the United States and that is principally engaged in financing ready marketable, staple, nonperishable agricultural products.

(b) The total amount of stock held in accordance with Subsection (a) of this section may not exceed an amount equal to:

(1) 10 percent of the capital and surplus of the acquiring

corporation; or

(2) 10 percent of the capital stock of the corporation of which the stock is to be held.

(c) Except in payment of debt, a banking corporation or trust company may not acquire stock of an agricultural finance corporation unless it first obtains express written authorization for the purchase from the banking commissioner under rules adopted by the banking commissioner.

(d) If a banking corporation or trust company acquires stock of an agricultural finance corporation in payment of debt, it shall promptly dispose of the stock unless it obtains express permission from the banking commissioner to retain the stock.

Acts 1981, 67th Leg., p. 1125, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 56.008. REGULATION BY BANKING COMMISSIONER. (a) An agricultural finance corporation is subject to the supervision and control of the banking commissioner and shall conform to the rules adopted by the banking commissioner.

(b) An agricultural finance corporation may not begin business until authorized to do so by the banking commissioner after it satisfactorily shows that it has complied with the law.

(c) An agricultural finance corporation is subject to the following requirements as if it were a state bank:

(1) it shall make reports to the banking commissioner;

(2) it shall permit periodic visitations and examinations conducted under the banking commissioner's direction; and

(3) it shall pay fees for those examinations.

(d) The banking commissioner may take charge of and liquidate an agricultural finance corporation for causes prescribed for similar actions against a state bank.

Acts 1981, 67th Leg., p. 1125, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 58. AGRICULTURAL FINANCE AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. SHORT TITLE. This chapter may be cited as the Texas Agricultural Finance Act.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987.

Sec. 58.002. DEFINITIONS. In this chapter:

(1) "Agricultural business" means:

(A) a business that is or proposes to be engaged in producing, processing, marketing, or exporting an agricultural product;

(B) an eligible applicant as defined in Subchapter E;

(C) the entity designated to carry out boll weevil eradication in accordance with Section 74.1011;

(D) any agriculture-related business in rural areas of Texas including a business that provides recreational activities, including hiking, fishing, hunting, or any other activity associated with the enjoyment of nature or the outdoors on agricultural land;

(E) a state agency or an institution of higher education that is engaged in producing an agricultural product;

(F) a business that holds a permit under Subchapter L, Chapter 43, Parks and Wildlife Code; or

(G) any other business in a rural area of this state.

(2) "Agricultural product" means an agricultural, horticultural, viticultural, or vegetable product, bees, honey, fish or other seafood, planting seed, livestock, a livestock product, a forestry product, poultry, or a poultry product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to it in this state.

(3) "Authority" means the Texas Agricultural Finance Authority.

(4) "Board" means the board of directors of the authority.

(5) "Bond" includes any type of obligation issued under this Act, including without limitation, any bond, note, draft, bill, warrant, debenture, interim certificate, revenue of bond anticipation note, grant, or any other evidence of indebtedness.

(6) "Commissioner" means the commissioner of agriculture.

(7) "Eligible agricultural business" means an agricultural business having its principal place of business in this state.

(8) "Lender" means a lending institution including a bank, trust company, banking association, savings and loan association, mortgage company, investment banker, credit union, life insurance

company, underwriter, or any affiliate of any of those entities, and also includes any other financial institution or governmental agency that customarily provides financing of agricultural loans or mortgages, or any affiliate of such an institution or agency.

(9) "Rural area" means an area which is predominately rural in character, being one which the board defines and declares to be a rural area.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1999, 76th Leg., ch. 1459, Sec. 8, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 26, Sec. 4, eff. May 2, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 5 (S.B. 948), Sec. 1, eff. September 1, 2009.

Sec. 58.003. VENUE. A suit filed by or on behalf of the authority under this chapter may be brought in Travis County.

Added by Acts 2001, 77th Leg., ch. 26, Sec. 5, eff. May 2, 2001.

SUBCHAPTER B. ADMINISTRATION

Sec. 58.011. CREATION OF AUTHORITY; PUBLIC PURPOSE. (a) The Texas Agricultural Finance Authority is created within the Department of Agriculture as a public authority.

(b) The authority is created to provide financial assistance for the expansion, development, and diversification of production, processing, marketing, and export of Texas agricultural products. The exercise by the authority of the powers and duties conferred by this chapter is an essential public purpose of the state in promoting the general welfare of the state and all of its citizens.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987.

Sec. 58.012. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors composed of the commissioner of agriculture, the director of the Institute for International

Agribusiness Studies at Prairie View A&M University, and nine members appointed by the commissioner. Members of the board must be appointed in the numbers specified and from the following categories:

(1) one person who is an elected or appointed official of a municipality or county;

(2) four persons who are knowledgeable about agricultural lending practices;

(3) one person who is a representative of agricultural businesses;

(4) one person who is a representative of agriculture related entities, including rural chambers of commerce, foundations, trade associations, institutions of higher education, or other entities involved in agricultural matters; and

(5) two persons who represent young farmers and the interests of young farmers.

(b) The appointed members of the board serve staggered terms of two years, with the terms of four members expiring on January 1 of each even-numbered year and the terms of five members expiring on January 1 of each odd-numbered year.

(c) Any vacancy occurring in an appointed position on the board shall be filled by the commissioner for the unexpired term.

(d) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(2).

(e) A board member is not entitled to compensation for serving as a director but is entitled to reimbursement for actual and necessary expenses incurred in performing the official duties of office.

(f) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) Notwithstanding Subsection (f), age may be considered by the commissioner in making appointments under Subsection (a)(5).

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1991, 72nd Leg., ch. 456, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 538, Sec. 1, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 419, Sec. 1.12, 5.11, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 285, Sec. 31(2), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.05, eff.

September 1, 2009.

Sec. 58.013. OFFICERS. (a) The commissioner shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the commissioner. The board shall elect a vice-chairman biennially from its members and shall elect a secretary, a treasurer, and other officers it considers necessary.

(b) The chairman of the board shall preside at meetings of the board and perform other duties prescribed by the board.

(c) The vice-chairman shall perform the duties of the chairman when the chairman is not present or is incapable of performing his duties of chairman.

(d) The secretary is the custodian of the minutes, books, records, and seal of the board and shall perform other duties prescribed by the board.

(e) The treasurer shall perform the duties prescribed by the board. The offices of secretary and treasurer may be held by the same individual.

(f) The board may appoint one or more individuals who are not board members to perform any duty of the secretary or treasurer.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.13, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.06, eff. September 1, 2009.

Sec. 58.014. MEETINGS; ADMINISTRATIVE PROCEDURE. (a) The board shall hold regular and special meetings at times specified by the chairman.

(b) A majority of the voting membership of the board constitutes a quorum. The board shall act by adopting resolutions. Except as otherwise provided by Sections 58.021(c) and 58.0211(a), the affirmative vote of a majority of the directors present is necessary to adopt a resolution.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board

and to speak on any issue under the jurisdiction of the board.

(d) The board is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.14, 1.15, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 26, Sec. 6, eff. May 2, 2001.

Sec. 58.015. ADMINISTRATION. (a) The commissioner with the assistance of the board shall administer the Texas Agricultural Finance Authority. The board shall reimburse the Department of Agriculture for expenses incurred as required by the business of the authority with the approval of the board.

(b) The commissioner may, with the approval of the board, appoint, employ, contract with, and provide for the compensation of employees, consultants, and agents including engineers, attorneys, management consultants, financial advisors, indexing agents, placement agents, and other experts as the business of the authority may require.

(c) The commissioner may, with the approval of the board, employ an administrator of the authority. The administrator may attend all meetings and participate, but not vote, in all proceedings of the authority.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 5.12, eff. Sept. 1, 1995.

Sec. 58.016. FISCAL ACCOUNTING OF ADMINISTRATION. (a) All funds acquired under this chapter may be used for administration of this chapter, except that funds representing the proceeds of bonds issued by the authority or pledged to the payment of the bonds of the authority shall be held and used as provided in the resolution or indenture authorizing the bonds.

(b) On or before August 1 of each year, the administrator shall file with the board the proposed annual budgets for the young farmer loan guarantee program under Subchapter E, the farm and ranch finance program under Chapter 59, and the programs administered by the board

under this chapter for the succeeding fiscal year. If there is no administrator, the commissioner shall assume the duties of the administrator in connection with preparation of the budget. The budget must set forth the general categories of expected expenditures out of revenues and income of the funds administered by the authority and the amount on account of each. On or before September 1 of each year, the board shall consider the proposed annual budget and may approve it or amend it. If for any reason the authority does not adopt an annual budget before September 2, no expenditures may be made from the funds until the board approves the annual budget. The authority may adopt an amended annual budget for the current fiscal year.

(c) The authority shall have an audit of its books and accounts for each fiscal year by a certified public accountant. The cost of the audit is an expense of the authority.

(d) On or before January 1 of each year, the authority shall prepare a report of its activities for the preceding fiscal year. The report must set forth a complete operating and financial statement.

(e) The board members, administrator, and staff of the authority may not be personally liable for bonds issued or contracts executed by the authority and shall be exculpated and fully indemnified in the documents relating to any bonds except in the case of fraudulent or wilful misconduct on the part of the individual seeking exculpation or indemnification.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 67, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 5.13, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1459, Sec. 9, eff. June 19, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 446 (S.B. 772), Sec. 1, eff. June 14, 2013.

Sec. 58.017. PERFORMANCE MEASURES. The Board, in conjunction with the Legislative Budget Board and the Office of the Governor, shall develop a minimum of two performance measures that provide information on the benefits of the authority's loan programs. The

performance measures shall be included in the report required under Section 58.016(d) of this code or as a component of the measures incorporated into the General Appropriations Act.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 5.14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1065, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1122, Sec. 17, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 785, Sec. 71, eff. Sept. 1, 2003.

Sec. 58.0171. REVIEW OF DEPARTMENT PLANS AND BUDGET REQUEST. The department shall provide the board with sufficient opportunity to review and comment on the finance program-related portions of the department strategic plan and the department biennial appropriation request, and any revision of a finance program-related portion of the plan or request, before submission to the legislature.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 5.15, eff. Sept. 1, 1995.

Sec. 58.0172. BOARD CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(e) A lending institution is not ineligible to participate in the programs administered by the board solely because a member of the board is also an officer, director, or employee of the lending

institution, provided that a board member shall recuse himself or herself from any action taken by the board on an application involving a lending institution by which the board member is employed or for which the board member serves as an officer or director.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.16, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1459, Sec. 10, eff. June 19, 1999.

Sec. 58.0173. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 58.012;

(2) does not maintain during service on the board the qualifications required by Section 58.012;

(3) violates a prohibition established by Section 58.0172;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 1.21(2), eff. September 1, 2009.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.16, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.21(2), eff. September 1, 2009.

Sec. 58.0174. STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable

laws relating to standards of conduct for state officers.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.16, eff. Sept. 1, 1995.

Sec. 58.0175. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.16, eff. Sept. 1, 1995.

Sec. 58.0176. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board;

(5) the current budget for funds the board administers;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code; and

(C) Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.16, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.07, eff.

September 1, 2009.

Sec. 58.0177. APPOINTED MEMBER PREPARATION PROGRAM. The board shall provide each appointed member of the board financial training adequate to prepare the member for the responsibilities of board membership before the member may begin service.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 5.16, eff. Sept. 1, 1995.

SUBCHAPTER C. PURPOSES AND POWERS

Sec. 58.021. PURPOSES OF AUTHORITY. (a) In order to promote the expansion, development, and diversification of production, processing, marketing, and export of Texas agricultural products and to promote the development of rural businesses, the authority shall design and implement programs to provide financial assistance to eligible agricultural businesses, including programs:

(1) to make or acquire loans to eligible agricultural businesses;

(2) to make or acquire loans to lenders to enable those lenders to make loans to eligible agricultural businesses;

(3) to insure, coinsure, and reinsure, in whole or in part, loans to eligible agricultural businesses;

(4) to guarantee, in whole or in part, loans to eligible agricultural businesses; and

(5) to administer or participate in programs established by another person to provide financial assistance to eligible agricultural businesses.

(b) The authority's programs shall be designed and implemented to provide financial assistance to enable eligible agricultural businesses to finance or refinance costs incurred in connection with the development, increase, improvement, or expansion of production, processing, marketing, or export of Texas agricultural products and for the development of rural agriculture-related businesses, including but not limited to the costs of:

(1) acquisition of and improvements to land or interests in land;

(2) acquisition, construction, rehabilitation, operation,

and maintenance of buildings, improvements, and structures;

(3) site preparations;

(4) architectural, engineering, legal, and related services;

(5) acquisition, installation, rehabilitation, operation, and maintenance of machinery, equipment, furnishings, and facilities;

(6) acquisition, processing, or distribution of inventory;

(7) research and development;

(8) financing fees and charges;

(9) interest during acquisition or construction;

(10) necessary reserve fund;

(11) acquisition of licenses, permits, and approvals from any governmental entity;

(12) pre-export and export expenses; and

(13) insect eradication and suppression programs.

(c) Except as otherwise provided by this subsection, the maximum aggregate amount of loans made to or guaranteed, insured, coinsured, or reinsured under this subchapter for a single eligible agricultural business by the authority from funds provided by the authority is $2 million. The authority may make, guarantee, insure, coinsure, or reinsure a loan for a single eligible agricultural business that results in an aggregate amount exceeding $2 million, but not exceeding $5 million, if the action is approved by a two-thirds vote of the board members present. The authority may make, guarantee, participate in, insure, coinsure, or reinsure loans to the entity designated to carry out boll weevil eradication in accordance with Section 74.1011 in an amount approved by the board to enable that entity to execute Subchapter D, Chapter 74. The authority may issue an obligation on behalf of, or make, guarantee, participate in, insure, coinsure, or reinsure loans to, a state agency or an institution of higher education for the purpose of the development, improvement, or expansion of an agricultural product or an agriculture-related business in an amount approved by the board. The authority may make, guarantee, participate in, insure, coinsure, or reinsure loans to an eligible agricultural business from the proceeds of revenue bonds issued in accordance with Section 58.033 in an amount approved by the board.

(d) Notwithstanding any other provision of this section, the authority may also design and implement programs to:

(1) further rural economic development; and

(2) reduce the amount of interest paid on loans approved by the authority.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1993, 73rd Leg., ch. 538, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 5.17, 10.09(11), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1014, Sec. 1, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 1459, Sec. 11, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 26, Sec. 7, eff. May 2, 2001.

Sec. 58.0211. LOAN LIMITS. (a) The authority may make, guarantee, insure, coinsure, or reinsure a loan up to the limits in this section and Section 58.021 for a single eligible business which already has an active loan if the action is approved by a two-thirds vote of the members present.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 1.21(3), eff. September 1, 2009.

(c) The authority may not guarantee more than 90 percent of a loan to an eligible agricultural business made by a private lender.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 5.18, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.21(3), eff. September 1, 2009.

Sec. 58.022. POWERS OF AUTHORITY. The authority has all powers necessary to accomplish the purposes and programs of the authority, including the power:

(1) to adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the board to carry out this chapter;

(2) to sue and be sued, complain, and defend, in its own name;

(3) to adopt and use an official seal and alter it when considered advisable;

(4) to acquire, hold, invest, use, pledge, and dispose of its revenues, income, receipts, funds, and money from every source

and to select one or more depositories, inside or outside the state, subject to this chapter, any resolution, bylaws, or in any indenture pursuant to which the funds are held;

(5) to establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities provided by the authority in accordance with this chapter;

(6) to issue its bonds, to provide for and secure the payment of the bonds, and provide for the rights of the owners of the bonds, in the manner and to the extent permitted by this chapter, and to purchase, hold, cancel, or resell or otherwise dispose of its bonds, subject to any restrictions in any resolution authorizing the issuance of its bonds;

(7) to procure insurance and pay premiums on insurance of any type, in amounts, and from insurers as the board considers necessary and advisable to accomplish any of its purposes;

(8) to make, enter into, and enforce contracts, agreements, including management agreements, for the management of any of the authority's property, leases, indentures, mortgages, deeds of trust, security agreements, pledge agreements, credit agreements, and other instruments with any person, including any lender and any federal, state, or local governmental agency, and to take other actions as may accomplish any of its purposes;

(9) to own, rent, lease, or otherwise acquire, accept, or hold real, personal, or mixed property, or any interest in property in performing its duties and exercising its powers under this chapter, by purchase, exchange, gift, assignment, transfer, foreclosure, mortgage, sale, lease, or otherwise and to hold, manage, operate, or improve real, personal, or mixed property, wherever situated;

(10) to sell, lease, encumber, mortgage, exchange, donate, convey, or otherwise dispose of any or all of its properties or any interest in its properties, deed of trust or mortgage lien interest owned by it or under its control, custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it, and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding any other law; and to lease or rent any improvements, lands, or facilities from any person to effect the purposes of this chapter;

(11) to request, accept, and use gifts, loans, donations, aid, appropriations, guaranties, allocations, subsidies, grants, or contributions of any item of value for the furtherance of any of its purposes;

(12) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing for eligible agricultural businesses for the purposes authorized by this chapter, including the refunding of outstanding obligations, mortgages, or advances issued for those purposes, and charge and collect interest on those loans for such loan payments and on such terms and conditions as the board may consider advisable and not in conflict with this chapter;

(13) to secure the payment by the state or the authority on guarantees and to pay claims from money in the authority's funds pursuant to the loan guarantee and insurance programs implemented by the authority;

(14) to purchase or acquire, sell, discount, assign, negotiate, and otherwise dispose of notes, debentures, bonds, or other evidences of indebtedness of eligible agricultural businesses, whether unsecured or secured, as the board may determine, or portions or portfolios of or participations in those evidences of indebtedness, and sell and guarantee securities, whether taxable or tax exempt under federal law in primary and secondary markets in furtherance of any of the authority's purposes; and

(15) to exercise all powers given to a corporation under Chapter 22, Business Organizations Code, to the extent not inconsistent with this chapter.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 5, eff. June 14, 2013.

Sec. 58.023. PROGRAMS RULES. (a) The board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board. The board's rules must state that the policy of the authority is to provide programs for providing financial assistance to eligible

agricultural businesses that the board considers to present a reasonable risk and have a sufficient likelihood of repayment. In establishing criteria for participation, the board shall give priority to eligible agricultural businesses that include producers of Texas agricultural products in the ownership of the businesses. The board shall adopt collateral or security requirements to ensure the full repayment of that financial assistance and the solvency of any program implemented under this chapter. The board shall approve any and all extensions of that financial assistance under this chapter, provided that the board may delegate this approval authority to the administrator or the commissioner.

(b) The board shall also adopt rules to establish criteria for lenders that may participate in the programs that may be established by the board.

(c) Eligible agricultural businesses or lenders participating in the authority's programs shall pay the costs of applying for, participating in, and administering and servicing the program, in amounts the board considers reasonable and necessary. The board shall charge an administrative fee for guaranteeing a loan under Subchapter E that may not be less than one percent of the amount of the guaranteed loan. Any costs not paid by the eligible agricultural businesses or lenders shall be paid from the funds of the authority, including those funds established from bond proceeds.

(d) The board by rule shall adopt an agreement to be used between a lender and an approved applicant under which the authority makes a payment from the Texas agricultural fund for the purpose of providing a reduced interest rate on a loan guaranteed to a borrower. The agreement must require the borrower to use the proceeds of the loan for the purposes of the program under which the payment is made. The board shall adopt rules to implement this subsection.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1999, 76th Leg., ch. 1459, Sec. 12, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 26, Sec. 8, eff. May 2, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.08, eff. September 1, 2009.

Sec. 58.024. AUTHORITY EXEMPTION FROM TAXATION. The property of the authority, its income, and operations are exempt from all taxes and assessments imposed by the state and all public agencies and political subdivisions on property acquired or used by the authority under this chapter.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987.

Sec. 58.025. PUBLIC HEARINGS. The administrator, the commissioner, or an individual designated by the commissioner may conduct public hearings relating to issuance of the authority's bonds or the implementation of financial assistance, and the commissioner may act as the applicable elected representative for purposes of approving any bonds or financial assistance required to be approved, including any approval required under Section 147(f) of the Internal Revenue Code of 1986.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987.

Sec. 58.026. LIMITATION OF LIABILITY FOR CERTAIN RECREATIONAL ACTIVITIES. Nothing in this chapter shall affect the applicability of Chapter 75, Civil Practice and Remedies Code.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 13, eff. June 19, 1999.

SUBCHAPTER D. BONDS

Sec. 58.031. ISSUANCE OF GENERAL OBLIGATION BONDS. (a) The board by resolution may periodically provide for the issuance of general obligation bonds as authorized by the Texas Constitution for the establishment of the Texas agricultural fund and the rural microenterprise development fund.

(b) Before authorizing the issuance of any general obligation bonds, the board must determine that the issuance of revenue bonds is not an economically advisable alternative for carrying out the purposes of this chapter.

(c) The authority may issue and sell general obligation bonds

of the state for the purpose of providing money to establish a Texas agricultural fund. The authority may issue the bonds in one or several installments.

(d) Proceeds of the bonds issued under Subsection (c) of this section shall be deposited in the Texas agricultural fund and applied in accordance with the resolution authorizing the bonds:

(1) to provide financial assistance to eligible agricultural businesses;

(2) to pay costs of issuance of those bonds and the administration of any financial assistance program established with money in the Texas agricultural fund; and

(3) together with any other available funds, to pay the principal of or interest on or to discharge or redeem, in whole or in part, any outstanding bonds issued by the authority.

(e) The authority may issue and sell general obligation bonds of the state for the purpose of providing money to establish a rural microenterprise development fund. The authority may issue the bonds in one or several installments.

(f) Proceeds of the bonds issued under Subsection (e) of this section shall be deposited in the rural microenterprise development fund, which is created in Section 44.013.

Added by Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Nov. 7, 1989.
Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 2, eff. Jan. 1, 1996.

Sec. 58.032. TEXAS AGRICULTURAL FUND. (a) The Texas agricultural fund is a fund in the state treasury.

(b) The Texas agricultural fund may, at the direction of the board, receive from the state or federal government or from any other person, money that is to be administered by the authority in connection with the provision of financial assistance to eligible agricultural businesses under any program funded in whole or in part with the proceeds of general obligation bonds issued to carry out the purpose of this chapter.

(c) The board may provide for the establishment and maintenance of separate accounts within the Texas agricultural fund, including program accounts as prescribed by the board, an interest and sinking account, a reserve account, and other accounts provided for by the board in its resolutions. Repayments of financial assistance under

any program funded in whole or in part with the proceeds of any series of general obligation bonds shall be deposited first in the interest and sinking account as prescribed by the board's resolutions authorizing such series of general obligation bonds, and second in the reserve account in respect of such series of general obligation bonds until that account is fully funded as prescribed by the board's resolutions. The fund and all accounts within it shall be kept and maintained at the direction of the board and held in trust by the comptroller for and on behalf of the authority and the owners of the general obligation bonds issued in accordance with this chapter, and may be used only as provided by this chapter. Pending its use, money in the fund shall be invested as prescribed by the resolution by which the bonds were issued.

(d) To the extent the board determines that any money credited to the Texas agricultural fund from repayments of financial assistance is not required by Subsection (c) of this section and the resolutions of the board to be held in the interest and sinking account or reserve account to provide for the payment of the principal of and interest on the outstanding general obligation bonds issued by the authority, that money may be used by the authority to pay the principal of and interest on revenue bonds issued by the authority or for any other authorized purpose of the authority, in accordance with this chapter and the authority's resolutions authorizing general obligation bonds.

(e) If during the existence of the Texas agricultural fund or during the time any general obligation bonds are payable from the fund the board determines that there will not be sufficient money in the interest and sinking account during the following fiscal year to pay the principal of or interest on the general obligation bonds or both the principal and interest that are to come due during the following fiscal year, the comptroller of public accounts shall transfer to the fund the first money coming into the state treasury not otherwise appropriated by the constitution in an amount sufficient to pay the obligations.

(f) The department may receive, and shall deposit in the Texas agricultural fund, appropriations, grants, donations, earned federal funds, and the proceeds of any investment pools operated by the comptroller.

(g) The fund includes grants and donations made for the purposes of the programs administered by the Texas Agricultural

Finance Authority and any other money received under this chapter. Notwithstanding Section 404.071, Government Code, income and interest earned on money in the fund shall be deposited to the credit of the fund. The fund is exempt from the application of Section 403.095, Government Code.

(h) The board shall attempt to administer the fund in a manner that makes private donations to the fund an eligible itemized deduction for federal income taxation purposes.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 455, Sec. 9, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 2.04, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.15, eff. September 1, 2009.

Sec. 58.033. ISSUANCE OF REVENUE BONDS. (a) In addition to the authority to issue general obligation bonds, the authority may issue not more than $500 million of revenue bonds for the purpose of providing money to carry out any purpose of the authority under this chapter. The authority shall establish and maintain funds and accounts, in accordance with Subsection (d) of this section, that the board considers necessary to ensure payment of the bonds and to provide for the use of the bond proceeds and the implementation of the program financed. Proceeds of revenue bonds shall be applied in accordance with the resolution authorizing those bonds:

(1) to provide financial assistance:

(A) to eligible agricultural businesses; and

(B) for programs designed to further rural economic development;

(2) to pay costs of issuance of those bonds and the administration of any financial assistance program established by the authority; and

(3) together with any other available funds, to pay the principal of or interest on or to discharge or redeem, in whole or in part, any outstanding bonds issued by the authority.

(b) The authority's revenue bonds are obligations solely of the

authority and are payable solely from funds of the authority that are pledged to the repayment of the revenue bonds. The authority may not use, except as provided in Section 58.032, or pledge money in the Texas agricultural fund to repayment of its revenue bonds. The authority's bonds are not and do not create or constitute a pledge, giving, or lending of the faith or credit or taxing power of the state. Each bond of the authority issued under this section must contain a statement to the effect that the state is not obligated to pay the principal of or any premium or interest on the bond, and that neither the faith or credit nor the taxing power of the state is pledged, given, or loaned to such a payment.

(c) Revenue bonds of the authority shall be payable as to principal, interest, and redemption premium, if any, from and secured by a first lien or a subordinate lien on and pledge of all or any part of the property, revenues, income, or other resources of the authority, as specified in the board's resolution authorizing issuance of those bonds, including mortgages or other interests in property financed, with the proceeds of such bonds, repayments of financial assistance, earnings from investments or deposits of the funds of the authority, fees, charges, and any other amounts or payments received pursuant to this chapter, and any appropriations, grants, allocations, subsidies, supplements, guaranties, aid, contribution, or donations from the state or federal government or any other person.

(d) The board may make additional covenants with respect to the bonds and the pledged revenues and may provide for the flow of funds, the establishment and maintenance and investment of funds, which may include interest and sinking funds, reserve funds, program funds, and other funds. Those funds shall be kept and maintained in escrow and in trust by the comptroller for and on behalf of the authority and the owners of its revenue bonds, in funds held outside the treasury pursuant to Chapter 404, Government Code. Those funds shall be used only as provided by this chapter, and pending their use shall be invested as provided by any resolution of the authority. Legal title to those funds shall be in the authority unless or until paid out as provided by this chapter or by the resolutions authorizing the authority's bonds. The comptroller, as custodian, shall administer those funds strictly and only as provided by this chapter and in those resolutions. The comptroller shall invest the funds in investments authorized by law for state funds. The state shall take

no action with respect to those funds other than that specified in this chapter and in those resolutions.

(e) The board may provide in the resolution authorizing any revenue bonds for the issuance of additional bonds to be equally and ratably secured by lien on the revenues and receipts, or for the issuance of subordinate lien bonds.

(f) Revenues of the authority that may be used as a source of payment for the bonds or to establish a reserve fund to secure the payment of debt service on the bonds or related obligations of the authority include repayments of financial assistance, money appropriated by the legislature to the authority for the purpose of paying or securing the payment of debt service on the authority's revenue bonds or related obligations, federal or private money allocated to financial assistance programs established under this chapter, amounts paid under any credit agreement for those purposes, or any other money that the authority pledges or otherwise commits for those purposes. To the extent that pledged revenues include amounts appropriated by the legislature, the revenue bonds must state on their face that those revenues are available to pay debt service only if appropriated by the legislature for that purpose.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 2.05, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 26, Sec. 9, eff. May 2, 2001.

Sec. 58.034. GENERAL PROVISIONS RELATING TO BONDS. (a) The authority's bonds may be issued from time to time in one or more series or issues, in bearer, registered, or any other form, which may include registered uncertified obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be provided for by the authority under a system of books and records maintained by the authority or by an agent appointed by the authority in resolution providing for issuance of its bonds. Bonds may mature serially or otherwise not more than 40 years from their date. Bonds may bear no interest or may bear interest at any rate or rates, fixed, variable, floating, or otherwise, determined by the board or determined

pursuant to any contractual arrangements approved by the board, not to exceed the maximum net effective interest rate allowed by Chapter 1204, Government Code. Interest on the bonds may be payable at any time, and the rate of interest on the bonds may be adjusted at such time as may be determined by the board or as may be determined pursuant to any contractual arrangement approved by the board. In connection with the issuance of its bonds, the board may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 1371, Government Code, to the extent not inconsistent with this chapter.

(b) The bonds issued under this chapter and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code. The bonds are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and unless specifically provided otherwise, under any subsequently enacted securities act. Any contract, guaranty, or any other document executed in connection with the issuance of bonds pursuant to this chapter is not a security under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and, unless specifically provided otherwise, any subsequently enacted securities act. The board is authorized to do all things necessary to qualify the bonds for offer and sale under the securities laws and regulations of the United States and of the states and other jurisdictions in the United States as the board shall determine.

(c) The bonds may be issued in the form and denominations and executed in the manner and under the terms, conditions, and details determined as provided by the board in the resolution authorizing their issuance. If any officer whose manual or facsimile signature appears on the bonds ceases to be an officer, the signature is still valid and sufficient for all purposes as if the officer had remained in office.

(d) All bonds issued by the authority are subject to review and approval by the attorney general in the same manner and with the same effect as is provided by Chapter 1371, Government Code.

(e) No fee may be charged by any other agency of this state in connection with the issuance of the bonds or the allocation of a portion of the state volume limitation on private activity bonds either under executive order or legislative enactment. No proceeding, notice, or approval is required for the issuance of any bonds or any instrument as security except as provided by this Act.

Nothing in this subsection may be constituted to deprive the state and its governmental subdivisions of their respective police powers or to impair any police power of any official or agency of the state or its subdivisions as may be provided by law.

(f) The state pledges to and agrees with the owners of any bonds issued in accordance with this chapter that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until those bonds, together with any premium and the interest on the bonds and all costs and expenses in connection with any action or proceeding by or on behalf of those owners, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the owners of those bonds.

(g) The bonds may be sold at public or private sale with or without public bidding in the manner, at such rate or rates, price or prices, and on such terms as may be determined by the board or determined as provided in any contractual arrangement approved by the board. The board also may enter into any contractual arrangement under which the bonds are to be sold from time to time, or subject to purchase, at such prices and rates, interest rate or payment periods, and terms as determined pursuant to that contractual arrangement approved by the board.

(h) Pending the preparation of definitive bonds, interim receipts or certificates in the form and with the provisions that are provided in the resolution may be issued to the purchaser or purchasers of bonds sold under this chapter.

(i) The board may provide procedures for the replacement of a mutilated, lost, stolen, or destroyed bond or interest coupon.

(j) The resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(k) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

(l) Repealed by Acts 1993, 73rd Leg., ch. 433, Sec. 1, eff. Aug. 30, 1993.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 433, Sec. 1, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 8.202, eff. Sept. 1,

2001.

Sec. 58.035. REFUNDING BONDS. The authority may issue, sell, and deliver bonds to refund all or any part of its outstanding bonds, including the payment of any redemption premium and interest accrued, under such terms, conditions, and details as determined by the board. Bonds issued by the authority may be refunded in the manner provided by any other applicable statute, including Chapter 1207, Government Code. Bonds, the provision for the payment of all interest and applicable premiums on which and the principal of which has been made through the irrevocable deposit of money with the comptroller in accordance with the provisions of such an applicable statute, shall no longer be charged against the issuing authority of the authority, and on the making of such provision such issuing authority shall, to the extent of the principal amount of such bonds, be restored.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 2.06, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.203, eff. Sept. 1, 2001.

Sec. 58.036. PAYMENT ENFORCEABLE BY MANDAMUS. Payment of the bonds and performance by the authority or the commissioner of its or his functions and duties under this chapter and the Texas Constitution may be enforced in the state supreme court by mandamus or other appropriate proceeding.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989.

Sec. 58.037. BONDS AS INVESTMENTS. (a) The bonds are legal and authorized investments for:

(1) banks;
(2) trust companies;
(3) savings and loan associations;
(4) insurance companies of all kinds and types;

(5) fiduciaries;
(6) trustees;
(7) guardians; and
(8) sinking and other public funds of the state, municipalities, counties, school districts, and other political subdivisions of the state.

(b) The bonds are eligible to secure the deposit of any public funds of the state, municipalities, counties, school districts, or other political subdivisions of the state, and the bonds shall be lawful and sufficient security for the deposits to the extent of their face value when accompanied by all unmatured coupons attached to the bonds.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989.

Sec. 58.038. TAX STATUS OF BONDS. The bonds issued by the authority, any transaction relating to the bonds, and any profits made in the sale of the bonds are free from taxation by the state or by any city, county, special district, or other political subdivision of the state; provided that this section does not exempt the owner of any property financed under this chapter from any ad valorem, sales, use, excise, or other tax levied by the state or any political corporation of this state.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989.

Sec. 58.039. REVIEW BOARD. (a) The bond review board is composed of:
(1) the governor;
(2) the lieutenant governor;
(3) the speaker of the house of representatives; and
(4) the comptroller of public accounts.

(b) The governor is chairman of the review board.

(c) Bonds may not be issued under this chapter, and proceeds of bonds under this chapter may not be used to finance a program unless

the issuance or program, as applicable, has been reviewed and approved by the review board.

(d) The review board may adopt rules governing application for review, the review process, and reporting requirements.

(e) A member of the review board may not be held liable for damages resulting from the performance of the members' functions under this chapter.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 32, art. 2, Sec. 1, eff. Oct. 20, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 2.07, eff. Sept. 1, 1997.
Added by Acts 1989, 71st Leg., ch. 1247, Sec. 1, eff. Sept. 1, 1989.
Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 2.002, eff. September 1, 2009.

Sec. 58.040. CONSIDERATIONS IN FINANCING. In determining whether to provide financing under this chapter, the board shall consider the likelihood of success of the applicant and the effect of the financing on job creation and retention in the state. The board shall give preference to applicants who are Texas residents doing business in the state, and then to applicants who can demonstrate that the financed activities will take place predominantly in this state.

Added by Acts 1989, 71st Leg., ch. 455, Sec. 10, eff. Aug. 28, 1989.

Sec. 58.041. ISSUANCE OF DEBT BY TEXAS PUBLIC FINANCE AUTHORITY. (a) In this section, "debt instrument" means a note, debenture, bond, or other evidence of indebtedness.

(b) The Texas Public Finance Authority has the exclusive authority to act on behalf of the authority in issuing debt instruments authorized to be issued by the authority. A reference in law to a debt instrument issued by the authority, in the context of a debt instrument issued on or after September 1, 2009, means a debt instrument issued by the Texas Public Finance Authority on behalf of the authority.

(c) Notwithstanding Section 58.034(e), the authority shall pay all costs incurred by the Texas Public Finance Authority for issuing debt instruments on behalf of the authority and associated fees and

expenses.

(d) When the board authorizes the issuance of debt instruments to fund a loan, the authority shall notify the Texas Public Finance Authority of the amount of the loan and the recipient of the loan and request the Texas Public Finance Authority to issue debt instruments in an amount necessary to fund the loan. The authority and the Texas Public Finance Authority shall determine the amount and time of a debt instrument issue to best provide funds for one or multiple loans.

(e) The Texas Public Finance Authority, at the request of the authority, may issue debt instruments to provide money to the Texas agricultural fund.

(f) The Texas Public Finance Authority may sell debt instruments in any manner it determines to be in the best interest of the authority, except that it may not sell a debt instrument that has not been approved by the attorney general and registered with the comptroller.

(g) The board, in consultation with the Texas Public Finance Authority, shall adopt rules containing criteria for evaluating the creditworthiness of loan applicants and the financial feasibility of projects to be funded with debt instruments issued by the Texas Public Finance Authority on behalf of the authority.

(h) The Texas Public Finance Authority may enter into a credit agreement for a debt instrument issued by the Texas Public Finance Authority on behalf of the authority for a period and on conditions approved by the Texas Public Finance Authority.

(i) This subsection applies only in relation to general obligation debt instruments. To the extent other sources of revenue available for payment of the authority's debts are insufficient and in accordance with the Texas Constitution, general revenue is to be appropriated to the Texas Public Finance Authority in an amount determined by the Texas Public Finance Authority to be necessary to pay the principal, premium if any, and interest on general obligation debt instruments issued by the Texas Public Finance Authority on behalf of the authority, and that amount shall be specified in the biennial appropriations acts.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.09, eff. September 1, 2009.

SUBCHAPTER E. AGRICULTURAL LOAN GUARANTEE PROGRAM

Sec. 58.051. DEFINITIONS. In this subchapter:

(1) "Commercial lender" means a commercial lending institution chartered by the state or federal government, including a savings and loan association, a credit union, or a Farm Credit System institution.

(2) "Eligible applicant" means a person applying for a loan guarantee under this subchapter who complies with the application procedures prescribed by this subchapter.

(3) "Plan" means the documentation submitted to the lender in support of the application.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 14, eff. June 19, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.11, eff. September 1, 2009.

Sec. 58.052. AGRICULTURAL LOAN GUARANTEE PROGRAM. (a) The board shall administer a loan guarantee program that benefits eligible applicants who desire to establish or enhance a farming or ranching operation or an agriculture-related business.

(b) The board, either directly or through authority delegated to the commissioner, may grant to an eligible applicant a guarantee of a loan made by a commercial lender for the purposes prescribed by this subchapter. The board by rule shall establish tiered loan guarantee limits. To be eligible to be guaranteed under this subchapter, a loan with a term of more than one year must have a fixed interest rate.

(c) The amount that may be used to guarantee loans under this subchapter may not exceed three times the amount contained in the Texas agricultural fund.

(d) A loan guarantee recipient may use proceeds from the loan for working capital for operating a farm or ranch, including the lease of facilities and the purchase of machinery and equipment, or for any agriculture-related business purpose, including the purchase of real estate, as identified in the plan. A loan guarantee is voidable by the board if the recipient uses loan proceeds for any purposes other than those identified in the plan. The board shall include this restriction as a condition in each loan guarantee

instrument executed under this subchapter.

(e) The board shall adopt an agreement, to be used between a commercial lender and an approved eligible applicant, under which the program provides a payment from money in the Texas agricultural fund for the purpose of providing a reduced interest rate on a loan guaranteed to a borrower under this subchapter. The board shall adopt rules to implement this subsection. The maximum rate reduction under this subsection per year for each borrower may not exceed three percentage points or an amount that results in $10,000 in interest savings for the borrower for the year.

(f) The board by rule shall establish a certified lender program under which the board may certify commercial lenders to participate in the agricultural loan guarantee program in order to expedite the processing of loan guarantee applications by the board.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 14, eff. June 19, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.12, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.13, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 868 (H.B. 2350), Sec. 1, eff. September 1, 2015.

Sec. 58.053. APPLICATION FOR LOAN GUARANTEE. (a) An eligible applicant's documentation shall include the following for the board's review:

(1) the plan, as submitted to the lender, for the applicant's proposed farm or ranch operation or agriculture-related business to be financed that includes a budget for the proposed operation;

(2) a completed application for a loan from a commercial lender on which an eligible applicant has indicated how the loan proceeds will be used to implement the applicant's plan; and

(3) the signed statement of a loan officer of the commercial lender that a loan guarantee is requested for approval of the loan application.

(b) The board may charge a reasonable application fee for processing an application filed under this section.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 14, eff. June 19, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1197 (S.B. 1214), Sec. 6, eff. June 14, 2013.

Sec. 58.054. BOARD CONSIDERATION OF LOAN GUARANTEE APPLICATION. After reviewing the material submitted under Section 58.053, the board shall consider the following factors in deciding whether to approve an application for a loan guarantee:

(1) the anticipated benefits from granting a loan guarantee to the applicant, including both potential job creation and commercial benefits to the agricultural industry;

(2) the applicant's qualifications;

(3) the feasibility of the applicant's plan; and

(4) other repayment sources available to the applicant.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 14, eff. June 19, 1999.

Sec. 58.055. DEFAULT. If the recipient of a loan guarantee defaults on a loan that is guaranteed under this subchapter and the authority is required to honor its guarantee, the authority, through its representative, may bring suit against the defaulting party. Any suit brought by the authority under this section may have venue in Travis County.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 14, eff. June 19, 1999.

Sec. 58.056. MONEY FOR LOAN GUARANTEE PROGRAM. The authority may accept gifts and grants of money from the federal government, local governments, private corporations, or other persons for use in the agricultural loan guarantee program. The legislature may appropriate money for the program.

Added by Acts 1999, 76th Leg., ch. 1459, Sec. 14, eff. June 19, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.14, eff. September 1, 2009.

SUBCHAPTER F. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM

Sec. 58.071. DEFINITIONS. In this subchapter:

(1) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, and agrees to participate in the young farmer interest rate reduction program and to provide collateral equal to the amount of linked deposits placed with it.

(2) "Linked deposit" means a time deposit governed by a written deposit agreement between the state and an eligible lending institution that provides:

(A) that the eligible lending institution pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate of a United States treasury bill or note of comparable maturity minus three percent; or

(ii) 0.5 percent;

(B) that the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) that the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a maximum rate that is the linked deposit rate plus a maximum of four percent.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.16, eff. September 1, 2009.

Sec. 58.072. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM. (a) The board shall establish a young farmer interest rate reduction program to promote the creation and expansion of agricultural businesses by young people in this state.

(b) To be eligible to participate in the young farmer interest rate reduction program, an applicant must be at least 18 years of age but younger than 46 years of age.

(c) The board shall approve or disapprove any and all applications under this subchapter, provided that the board may delegate this authority to the commissioner.

(d) The board shall adopt rules for the loan portion of the young farmer interest rate reduction program.

(e) In order to participate in the young farmer interest rate

reduction program, an eligible lending institution may solicit loan applications from eligible applicants.

(f) After reviewing an application and determining that the applicant is eligible and creditworthy, the eligible lending institution shall send the application for a linked deposit loan to the administrator of the authority.

(g) The eligible lending institution shall certify the interest rate applicable to the specific eligible applicant and attach it to the application sent to the administrator of the authority.

(h) After reviewing each loan application under this subchapter, the board or the commissioner shall recommend to the comptroller the acceptance or rejection of the application.

(i) After acceptance of the application, the comptroller shall place a linked deposit with the applicable eligible lending institution for the period the comptroller considers appropriate. The comptroller may not place a deposit for a period extending beyond the state fiscal biennium in which it is placed. Subject to the limitation described by Section 58.075, the comptroller may place time deposits at an interest rate described by Section 58.071(2).

(j) Before the placing of a linked deposit, the eligible lending institution and the state, represented by the comptroller, shall enter into a written deposit agreement containing the conditions on which the linked deposit is made.

(k) If a lending institution holding linked deposits ceases to be either a state depository or a Farm Credit System institution headquartered in this state, the comptroller may withdraw the linked deposits.

(l) The board may adopt rules that create a procedure for determining priorities for loans granted under this subchapter. Each rule adopted must state the policy objective of the rule.

(m) A lending institution is not ineligible to participate in the young farmer interest rate reduction program solely because a member of the board is also an officer, director, or employee of the lending institution, provided that a board member shall recuse himself or herself from any action taken by the board on an application involving a lending institution by which the board member is employed or for which the board member serves as an officer or director.

(n) Linked deposits under the young farmer interest rate reduction program shall be funded from the Texas agricultural fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.16, eff. September 1, 2009.

Sec. 58.073. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must loan money to eligible applicants in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the board.

(b) The board shall monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.16, eff. September 1, 2009.

Sec. 58.074. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made under this subchapter. A delay in payment or default on a loan by a borrower does not affect the validity of the deposit agreement. Linked deposits are not an extension of the state's credit within the meaning of any state constitutional prohibition.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.16, eff. September 1, 2009.

Sec. 58.075. LIMITATIONS IN PROGRAM. (a) The maximum amount of a loan under this subchapter is $500,000.

(b) A loan granted under this subchapter may be used for any agriculture-related operating expense, including the purchase or lease of land or fixed assets acquisition or improvement, as identified in the application.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.16, eff. September 1, 2009.

SUBCHAPTER G. YOUNG FARMER GRANT PROGRAM

Sec. 58.091. GRANT PROGRAM. (a) The authority shall administer a young farmer grant program. A grant must be for the purpose of fostering the creation and expansion of agricultural businesses by young people in this state.

(b) The board shall adopt rules governing the operation of the program and selection criteria for grant recipients.

(c) The board shall select grant recipients.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.17, eff. September 1, 2009.

Sec. 58.092. ELIGIBILITY. To be eligible to receive a grant under this subchapter, a person must:

(1) be an agricultural producer who is at least 18 years of age but younger than 46 years of age; and

(2) provide matching funds in the amount of not less than one dollar for each dollar of grant money received.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.17, eff. September 1, 2009.

Sec. 58.093. AMOUNT OF GRANTS. A grant under the young farmer grant program may not be less than $5,000 or more than $20,000.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.17, eff. September 1, 2009.

Sec. 58.094. APPLICATIONS. (a) The authority shall accept grant applications during two application periods each year.

(b) Applicants shall submit an application on a form approved by the board or the board's designee.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.17, eff. September 1, 2009.

Sec. 58.095. FUNDING. The source of funds for the young farmer grant program is the Texas agricultural fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 1.17, eff. September 1, 2009.

CHAPTER 59. FARM AND RANCH FINANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. In this chapter:

(1) "Authority" means the Texas Agricultural Finance Authority created by Chapter 58 of this code.

(2) "Board" means the board of directors of the authority.

(3) "Bond" means a general obligation bond, certificate, note, or other obligation issued or incurred by the authority under this chapter as provided by Article III, Section 49-f, of the Texas Constitution.

(4) "Commissioner" means the commissioner of agriculture.

(5) "Fund" means the farm and ranch finance program fund.

(6) "Program" means the farm and ranch finance program.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 3, eff. Jan. 1, 1996.

Sec. 59.002. DUTIES. (a) The authority shall administer the program.

(b) The board shall administer the fund.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 4, eff. Jan. 1, 1996.

Sec. 59.003. LIMITED IMMUNITY FROM SUIT OR LIABILITY. A member of the board may be sued and held personally liable for damages that result from an official act or omission only if the act or omission is corrupt or malicious.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 5, eff. Jan. 1, 1996.

SUBCHAPTER B. BONDS

Sec. 59.011. BONDS. (a) The board may provide by order or

resolution for the issuance and sale of negotiable bonds authorized by Article III, Section 49-f, of the Texas Constitution. The proceeds from the sale of the bonds constitute the fund.

(b) Subchapter D, Chapter 58, as it relates to the issuance, sale, and refunding of bonds, applies to the board's issuance, sale, and refunding of bonds under this chapter to finance the fund.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 6, eff. Jan. 1, 1996.

Sec. 59.012. DISPOSITION OF BOND PROCEEDS.

Text of subsec. (a) as amended by Acts 1995, 74th Leg., ch. 858, Sec. 1

(a) Except as provided by Subsection (b) of this section, proceeds from the sale of the bonds, other than refunding bonds, shall be deposited in the state treasury to the credit of the fund.

Text of subsec. (a) as amended by Acts 1995, 74th Leg., ch. 1014, Sec. 7

(a) Except as provided by Subsections (b), (c), and (d) of this section, proceeds from the sale of the bonds, other than refunding bonds, shall be deposited in the state treasury to the credit of the fund.

(b) The board may provide for transferring to the interest and sinking account from the proceeds of the sale of bonds or from the available money in the fund directly an amount that, together with the accrued interest received, is sufficient to pay interest becoming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.

(c) The board may provide from the proceeds of the sale of bonds or from available money in the fund an amount that is reasonable and necessary to cover the costs of administering the program.

(d) The board shall deposit the proceeds from the sale of bonds, as authorized by the Texas Constitution, into the Texas agricultural fund, to be administered as provided by Chapter 58 of this code.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 858, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1014, Sec. 7, eff. Jan. 1, 1996.

Sec. 59.013. PAYMENT OF PRINCIPAL AND INTEREST. The board shall arrange for payment of the principal of bonds as they mature and the interest on the bonds as it becomes payable.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 8, eff. Jan. 1, 1996.

Sec. 59.014. APPROVAL BY ATTORNEY GENERAL. Before the bonds are delivered to the purchasers, the attorney general shall examine the record relating to the bonds. If the record demonstrates that the bonds have been issued in accordance with the Texas Constitution and this chapter, the attorney general shall approve the bonds.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.

Sec. 59.015. USE OF FUND TO PAY COSTS OF ISSUANCE AND DEBT SERVICE. (a) The board may use money in the fund attributable to the issuance and sale of bonds to pay:

(1) legal fees and fees for financial advice the board finds necessary for the sale of bonds;

(2) the expense of publishing notice of sale of an installment of bonds;

(3) the expense of printing the bonds;

(4) the expense of issuing the bonds, including the actual costs of travel, lodging, and meals of officers, members, or employees of the board, directors or employees of the authority, the comptroller, or the attorney general that the board finds necessary to implement the issuance, rating, or delivery of the bonds;

(5) the cost of manually signing the bonds;

(6) remuneration to any agent employed by the board to pay the principal of and interest on the bonds;

(7) any amount required to be paid to maintain the federal tax exemption of interest on the bonds; or

(8) any other cost, fee, or expense relating to the issuance of the bonds.

(b) If, during the existence of the fund or during the period any bonds are payable from the fund, the board determines that there will not be sufficient money in the fund during the following fiscal year to pay the principal of or interest on the bonds that is to come due during the following fiscal year, the comptroller shall transfer to the fund from the first money coming into the state treasury not otherwise appropriated by the constitution an amount sufficient to pay the obligations.

(c) The money transferred to the fund under Subsection (b) of this section shall be used to pay the obligations only if at the time the principal or interest becomes due there is not sufficient money in the fund to pay the amount due.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 9, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1423, Sec. 2.08, eff. Sept. 1, 1997.

Text of section as amended by Acts 1995, 74th Leg., ch. 265, Sec. 3

Sec. 59.016. INVESTMENTS. (a) The authority shall give timely instruction to the board of the dates on which principal on bonds matures and interest becomes payable. The board shall administer the fund accordingly.

(b) Money in the fund that is not immediately committed to paying principal of and interest on the bonds or to paying expenses as provided by Section 59.015 of this code may be invested by the board in:

(1) a direct security repurchase agreement or reverse security repurchase agreement made with a state or national bank domiciled in this state or with a primary dealer approved by the federal reserve system;

(2) a direct obligation of or obligation the principal and interest of which are guaranteed by the United States government;

(3) a direct obligation of or obligation guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor to one of those organizations;

(4) a bankers' acceptance that:

(A) is eligible for purchase by a member of the federal

reserve system;

(B) matures in 270 days or less; and

(C) is issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;

(5) commercial paper that:

(A) matures in 270 days or less; and

(B) has received the highest short-term credit rating by a nationally recognized investment rating firm;

(6) a contract that is written by the board in which the board grants the purchaser the right to purchase securities in the board's marketable securities portfolio at a specified price over a specified period and for which the board is paid a fee and that specifically prohibits naked-option or uncovered option trading;

(7) an obligation of a state or of an agency, county, city, or other political subdivision of a state or a mutual fund composed of those obligations;

(8) an investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States government;

(9) an investment, account, depository receipt, or deposit that is fully:

(A) insured by the Federal Deposit Insurance Corporation or a successor to that organization; or

(B) secured by a security described by Subdivision (2), (3), or (8) of this subsection;

(10) a collateralized mortgage obligation fully secured by securities or mortgages issued or guaranteed by the Government National Mortgage Association (GNMA) or any entity identified by Subdivision (3) of this subsection;

(11) a security or evidence of indebtedness issued by the Farm Credit System Financial Assistance Corporation, the Private Export Funding Corporation, or the Export-Import Bank; and

(12) any other investment authorized for investment of state funds by the comptroller under Section 404.024, Government Code.

(c) In this section:

(1) "Direct security repurchase agreement" means an agreement under which the board buys, holds for a specified time, and

then sells back any of the following securities, obligations, or participation certificates:

(A) a United States government security;

(B) a direct obligation of or an obligation the principal and interest of which are guaranteed by the United States government;

(C) a direct obligation of or an obligation guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor to one of those organizations; or

(D) any other investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States government.

(2) "Market value" means the fair and reasonable prevailing price at which a security is being sold on the open market at the time of the appraisement of the security by the board.

(3) "Reverse security repurchase agreement" means an agreement under which the board sells and after a specified time buys back any of the securities, obligations, or participation certificates listed by Subdivision (1) of this subsection.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 265, Sec. 3, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 2.09, eff. Sept. 1, 1997.

Text of section as amended by Acts 1995, 74th Leg., ch. 1014, Sec. 10

Sec. 59.016. INVESTMENTS. The board shall invest funds as provided under Section 58.022.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 10, eff. Jan. 1, 1996.

SUBCHAPTER C. ADMINISTRATION

Sec. 59.021. FUND. (a) The farm and ranch finance program fund is a fund in the state treasury.

(b) At the direction of the board, money received from the state or federal government or from any other person, in addition to proceeds from bonds issued under this chapter, may be deposited to the credit of the fund.

(c) The board may provide for establishing and maintaining separate accounts in the fund, including program accounts, an interest and sinking account, a reserve account, and any other accounts provided for by resolution of the board.

(d) Money received as repayment of financial assistance shall be deposited first in the interest and sinking account as provided by resolution of the board authorizing its bonds until that account is fully funded as provided by resolution of the board.

(e) The fund and each account in the fund shall be kept and maintained at the direction of the board and held in trust by the comptroller for and on behalf of the board and the owners of the bonds issued under this chapter.

(f) The fund may be used only as provided by this chapter.

(g) Pending its use, money in the fund shall be invested as provided by the resolution authorizing issuance of the bonds.

(h) The board may receive, and shall deposit in the fund, appropriations, grants, donations, earned federal funds, and the proceeds of any investment pools operated by the comptroller.

Text of subsec. (i) as added by Acts 1995, 74th Leg., ch. 858, Sec. 2

(i) In addition to other uses provided by this chapter, the authority may use money in the fund to pay costs and expenses of administering the program.

Text of subsec. (i) as added by Acts 1995, 74th Leg., ch. 1014, Sec. 11

(i) The board may use money in the fund to pay the costs and expenses of administering the program.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 858, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1014, Sec. 11, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1423, Sec. 2.10, eff. Sept. 1, 1997.

Sec. 59.022. RULES. (a) The board shall adopt rules governing application for financial assistance under this chapter. The board may adopt rules it considers necessary to administer the program or

considers in the best interest of the program. The board may adopt rules concerning the sale of land acquired by the board under this chapter by default, foreclosure, forfeiture, or any other means. The board shall adopt collateral or security requirements to ensure the full repayment of financial assistance granted under this chapter. The board may approve any extension of financial assistance under this chapter or may delegate that approval authority to the commissioner.

(b) The board may adopt rules it considers necessary to administer the fund or considers in the best interest of the fund, including rules on the investment of the fund.

(c) The board may set and collect fees the board considers reasonable and necessary to cover the expenses of administering the program or considers in the best interest of the program. Those fees shall be deposited in the state treasury to the credit of the farm and ranch finance program fund. An applicant for financial assistance participating in the program shall pay the costs of applying for, participating in, and administering and servicing the program, in amounts the board considers reasonable and necessary. Any cost not paid by an applicant shall be paid from the fund.

(d) The board shall adopt rules governing loan guarantees provided to lenders by the board in an amount necessary for the lender to have a performing loan.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 858, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1014, Sec. 12, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 26, Sec. 11, eff. May 2, 2001.

Sec. 59.023. POWERS OF BOARD. The board has the power necessary to accomplish the purposes and carry out the programs provided by this chapter, including the power:

(1) to adopt and enforce bylaws, rules, and procedures necessary to carry out this chapter;

(2) to establish, charge, and collect a fee, charge, or penalty in connection with a program, service, or activity provided by the board under this chapter;

(3) to issue bonds, provide for and secure the payment of the bonds, and provide for the rights of the owners of the bonds, in

the manner and to the extent permitted by this chapter;

(4) to purchase, hold, cancel, or resell or otherwise dispose of its bonds, subject to any restrictions and any resolution authorizing the issuance of its bonds;

(5) to own, rent, lease, or otherwise acquire, accept, or hold any interest in real, personal, or mixed property, by purchase, exchange, gift, assignment, transfer, foreclosure, mortgage, sale, lease, or otherwise;

(6) to hold, manage, operate, or improve real, personal, or mixed property;

(7) to sell, lease, encumber, mortgage, exchange, donate, convey, or otherwise dispose of any of its property or any interest in its property, deed of trust, or mortgage lien owned by it, under its control or custody, or in its possession and to release or relinquish any right, title, claim, lien, interest, easement, or demand, including any equity or right of redemption in property foreclosed by it, by public or private sale, with or without public bidding;

(8) to lease or rent any improvement, land, or facility from any person;

(9) to make a secured or unsecured loan to provide financial assistance as provided by this chapter, including the refunding of an outstanding obligation, mortgage, or advance used for those purposes, and to charge and collect interest on those loans for loan payments and on terms and conditions the board considers advisable that are not in conflict with this chapter;

(10) to purchase or acquire, sell, discount, assign, negotiate, or otherwise dispose of notes or other evidence of indebtedness of eligible applicants as the board determines or portions or portfolios of or participations in those evidences of indebtedness;

(11) to sell and guarantee securities, whether taxable or tax exempt under federal law, in primary and secondary markets; and

(12) to provide to a lender a loan guarantee for the purchase of real property by an eligible applicant under Section 59.024.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 13, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 26, Sec. 12, eff. May 2, 2001.

Sec. 59.024. APPLICATION; ELIGIBILITY. (a) To borrow money from the fund, a person must submit an application to the authority that contains an acceptable agricultural business plan for the land proposed to be purchased that assures the authority the applicant intends to use the land for the primary purpose of farming or ranching.

(b) To be eligible to borrow money from the fund, a person, at the time of application, must:

(1) provide evidence to the authority that demonstrates that the person has at least three years of experience relevant to the person's agricultural business plan for the land proposed to be purchased; and

(2) have a net worth of less than $400,000.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 858, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 473, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.025. MAXIMUM AMOUNT OF LOAN OR GUARANTEE. (a) A loan under this chapter may not exceed the lesser of:

(1) $250,000; or

(2) an amount equal to 95 percent of the lesser of the purchase price of the land or the land's appraised value under Section 59.028.

(b) The board may provide a guarantee of not more than 90 percent of a loan approved under this section.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 858, Sec. 5, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1014, Sec. 14, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 473, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 26, Sec. 13, eff. May 2, 2001.

Sec. 59.026. TRANSFER OF BORROWER'S INTEREST. (a) The contract for a loan under this chapter must provide that transfer of ownership of the land without the board's express written permission before the entire principal and interest due have been paid

constitutes default under the contract.

(b) If the borrower dies or becomes financially incapacitated or if the borrower's interest in land is involuntarily transferred by court order or other proceedings, including bankruptcy, sheriff or trustee sale, or divorce, the land may be conveyed by the borrower or the borrower's heirs, administrators, executors, or successors in interest by complying with the rules adopted by the board and obtaining the board's written permission.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 15, eff. Jan. 1, 1996.

Sec. 59.027. CHANGES IN USE. (a) Before a borrower may use land acquired with financial assistance under this chapter for a primary purpose other than farming or ranching, the borrower must submit to the board an application for approval of the change of use.

(b) As soon as practicable after an application for a change of use is received, the board shall approve or deny the application and shall notify the borrower of the board's decision.

(c) The loan contract must provide that using land acquired under this chapter for a purpose other than farming or ranching without the approval of the board constitutes default under the contract.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 16, eff. Jan. 1, 1996.

Sec. 59.028. APPRAISAL. (a) Before the board may loan money for the purchase of land under this chapter, the board must have an appraisal of the property made to determine its value.

(b) An appraiser representing the board must be qualified to give competent appraisals of land. The board may use appraisers employed by the board.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 17, eff. Jan. 1, 1996.

Sec. 59.029. PAYMENTS TO BOARD UNDER CERTAIN LEASES. If, during a period a person is indebted to the board for land purchased with financial assistance under this chapter, the person executes or there exists a lease or contract of sale of oil, gas, or other minerals, chemicals, hard metals, timber, sand, gravel, or other material that covers the land purchased from the board that would result in the depletion of the corpus of the land, not less than one-half of all bonus money, delay rentals, or royalties received as consideration for or payment under the oil, gas, or mineral lease and not less than one-half of all money received under a lease or contract of sale of other minerals, chemicals, hard metals, timber, sand, gravel, or other material shall be paid to the board by the lessee under the lease or the buyer under the contract of sale. The board shall apply those payments to the satisfaction of the indebtedness.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 18, eff. Jan. 1, 1996.

Sec. 59.030. TERM OF LEASES. (a) A purchaser may not lease land purchased with financial assistance under this chapter for a term longer than 10 years, except:

(1) a lease for oil, gas, or other minerals may be for a term of not longer than 10 years, and as long thereafter as oil, gas, or other minerals are produced from the land in commercial quantities; and

(2) a lease for coal and lignite may be for a term of not longer than 40 years, and as long thereafter as coal and lignite are produced from the land in commercial quantities.

(b) A lease or a separate instrument to take effect in the future may not contain a provision for option or renewal of the lease or re-lease of the property for any term that would result in a fixed term of the lease that exceeds the maximum fixed term authorized under Subsection (a) of this section. A lease or instrument that contains an option renewal or re-lease agreement in violation of this section is void.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.

Sec. 59.031. DEATH OF A BORROWER. (a) If a borrower receiving financial assistance under this chapter dies while indebted to the state under a contract, the borrower's rights under this chapter and the contract devolve on the borrower's heirs, devisees, or personal representatives under the laws of this state, subject to all rights, claims, and charges of the board.

(b) Default by an heir, devisee, or personal representative with respect to a right, claim, or charge of the board has the same effect as default by the borrower before the borrower's death.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 19, eff. Jan. 1, 1996.

Sec. 59.032. UNENCUMBERED TITLE. The board may establish a procedure by which a borrower acquiring land with a loan under this chapter may obtain title to a portion of the tract clear of encumbrances.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1014, Sec. 20, eff. Jan. 1, 1996.

SUBCHAPTER D. OFFENSES; PENALTIES

Sec. 59.046. FALSE OR FICTITIOUS WRITTEN STATEMENT. (a) A person commits an offense if the person knowingly or intentionally makes, publishes, passes, files, or uses any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other written instrument relating to the procurement of financial assistance under this chapter or to the purchase, sale, or resale of land under this chapter or in connection with any transaction under this chapter.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.

Sec. 59.047. FRAUD. (a) A person commits an offense if the person defrauds a person of rights or benefits under this chapter or uses this chapter to defraud the state by an act of fraud, duress, deceit, coercion, or misrepresentation.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1993, 73rd Leg., ch. 542, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 60. TEXAS AGRICULTURAL DEVELOPMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 60.001. SHORT TITLE. This chapter may be cited as the Agricultural Development District Act.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.002. LEGISLATIVE INTENT. This chapter furthers the public purpose of improving the economy of this state by providing incentives for the development of agricultural operations and facilities.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.003. FINDINGS. (a) Agriculture is a critical element in Texas' economic, cultural, and historical development but is under considerable pressure as a result of market concentration, competitive forces, adverse weather conditions, urbanization, and other factors.

(b) Agriculture is a vital component of a diversified state economy, creates numerous economic opportunities, and serves to renew the state's natural resources through the annual production of crops and livestock and the use and reuse of agricultural by-products.

(c) The state must increase economic opportunities, including value-added operations, to keep more agriculture-based activity in the state and ensure that agriculture remains a vital force in the economy. In order to accomplish this goal, the state must provide

incentives to promote the development of agricultural facilities.

(d) The means and measures authorized by this chapter are in the public interest and serve a public purpose of this state in promoting the development of agricultural facilities and operations by providing incentives for the development of projects that result in employment and economic activity.

(e) The creation of agricultural development districts is essential to accomplish the purposes of Section 52-a, Article III, Texas Constitution, and to accomplish the other public purposes stated in this chapter and further serves the purposes of Section 59, Article XVI, and Section 52, Article III, Texas Constitution.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.004. DEFINITIONS. In this chapter:

(1) "Assessment" means a charge levied against real property located within a district's boundaries or against an agricultural product produced on real property in the district to pay the costs associated with the district's purposes, including a reassessment or supplemental assessment.

(2) "Board" means the board of directors of a district.

(3) "Bond" means an obligation issued by a district under this chapter, including a bond, certificate, note, or other evidence of indebtedness.

(4) "Director" means a member of the board of directors of a district.

(5) "District" means a Texas Agricultural Development District established under this chapter.

(6) "Project" means an agricultural project designated under Section 60.054.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.005. GOVERNMENTAL AGENCY; TORT CLAIMS. A district is a governmental agency, a body politic and corporate, and a political subdivision of this state. Section 375.004, Local Government Code, applies to a district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.006. PURPOSE AND NATURE OF DISTRICT. (a) A district is created as a conservation and reclamation district under Section 59, Article XVI, Texas Constitution, to conserve and develop the natural resources of this state, including agricultural resources.

(b) A district created under this chapter exercises public and essential governmental functions.

(c) Chapter 49, Water Code, does not apply to a district, except as provided by Section 60.061.

(d) The creation of a district is essential to accomplish the purposes of Section 52-a, Article III, Texas Constitution, and other public purposes stated in this chapter.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 60.021. PETITION TO ESTABLISH DISTRICT. (a) On petition of at least 10 residents of a proposed district, five of whom must own real property in the proposed district, the commissioners court of a county in which an agricultural facility of the proposed district is to be located may commence the creation of a district.

(b) The creation of the district is subject to a confirmation election held as provided by this subchapter.

(c) A district may consist of parcels of land that are:

(1) not contiguous; and

(2) located in one or more counties.

(d) Not later than the 10th day following the date of receipt of a petition, the commissioners court shall provide notice of the receipt of the petition and a copy of the petition to:

(1) the commissioners court of each other county located in whole or in part in the proposed district; and

(2) the governing body of each municipality located in whole or in part in the proposed district.

(e) No part of a proposed district may be located within the corporate boundaries of a municipality unless, prior to the formation of the district, the governing body of the municipality consents in writing to the formation of the district within the municipality.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.022. CONTENTS OF PETITION. A petition filed under Section 60.021 must:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) include a name for the proposed district, which must include the term "Agricultural Development District";

(3) be signed by the landowners of any land to be included within the proposed district and provide an acknowledgment consistent with Section 121.001, Civil Practice and Remedies Code, that the landowners desire the land to be included in the district;

(4) include the names of at least five persons who are willing and qualified to serve as temporary directors of the district;

(5) name each county in which any agricultural facilities to be owned by the district are to be located;

(6) name each municipality in which any part of the district is to be located;

(7) state the general nature of the proposed development and the cost of the development as then estimated by the petitioners;

(8) state the necessity and feasibility of the proposed district and whether the district will serve the public purpose of furthering agricultural interests;

(9) include a pledge that the district will make payments in lieu of taxes to any school district and county in which any real property to be owned by the district is located, as follows:

(A) annual payments to each entity equal to the amount of taxes imposed on the real property by the entity in the year of the district's creation; and

(B) a payment to each entity equal to the amount that would be due under Section 23.55, Tax Code, on the district's date of creation; and

(10) include a pledge that, if the district employs more than 50 persons, the district will make payments in lieu of taxes to any school district, in addition to those made under Subdivision (9), in an amount negotiated between the district and the school district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.023. COMMISSIONERS COURT TO CALL PUBLIC HEARING. Before the 30th day after the date a petition is received, the commissioners court shall call a public hearing at which the petition will be considered. The notice of the hearing must state that any person may appear and present evidence or testify for or against the creation of the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.024. ADDITIONAL NOTICE OF PUBLIC HEARING. In addition to other notice required by law, before the 14th day before the date of the public hearing, notice of the hearing shall be mailed to the persons who signed the petition and be published in a newspaper with general circulation in the county with the most land within the proposed district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.025. PUBLIC HEARING. (a) At the public hearing, the commissioners court shall examine the petition to ascertain its sufficiency.

(b) Any interested person may appear at the public hearing to offer evidence or testimony on the sufficiency of the petition and whether the district should be created.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.026. ACTION ON PETITION. (a) After the hearing, if the commissioners court finds that the petition conforms to the requirements of Section 60.022 and that the creation of the district and the proposed development is feasible and necessary and would serve the public purpose of economic development in the counties to be included in the district, the commissioners court shall make that finding and enter an order granting the petition and creating the district.

(b) The order may specify the cost of publishing notice and

conducting hearings for the creation of the district together with the cost of conducting the confirmation election. A county may require the petitioners to pay the county the appropriate amounts specified in the order creating the district at the time the order becomes final.

(c) If the commissioners court finds that the petition does not conform to the requirements of Section 60.022 or that the creation of the district and the proposed project is not feasible and necessary and would not serve the public purpose of economic development in the counties to be included in the district, the commissioners court shall make that finding in an order and deny the petition.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.027. TEMPORARY DIRECTORS; VACANCY IN OFFICE. (a) If the commissioners court grants the petition, it shall appoint as temporary directors of the district five persons who are qualified under this chapter to serve as directors.

(b) A vacancy in the office of temporary directors shall be filled by appointment by the commissioners court.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.028. QUALIFICATION AND BOND OF TEMPORARY DIRECTORS. Each temporary director shall execute a bond in accordance with Section 60.087 and shall take the oath of office.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.029. ELECTION TO CONFIRM DISTRICT AND INITIAL PERMANENT DIRECTORS. The temporary board of directors shall conduct an election in the district to confirm the creation of the district and to confirm the initial permanent directors.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.030. ELECTION ORDER. An order calling an election

under Section 60.029 must state:

(1) the nature of the election, the proposition to appear on the ballot, and the names of at least five persons to serve as the initial permanent members of the board of directors;

(2) the number and terms of directors on the board and the manner of selection of board members;

(3) the date of the election;

(4) the hours during which the polls will be open; and

(5) the location of the polling places.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.031. NOTICE. In addition to other notice required by law, the temporary directors shall give notice of the election by publishing the substance of the election order in a newspaper with general circulation in the county in which the most land within the proposed district is located. The notice must be published before the 14th day before the date set for the election.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.032. CONDUCT OF ELECTION. (a) The election shall be held in accordance with the Election Code, to the extent not inconsistent with this chapter.

(b) The ballot shall be printed to permit:

(1) voting for or against the proposition: "The creation of _____ Agricultural Development District and confirmation of the initial permanent directors of the district"; and

(2) naming of the proposed initial permanent directors.

(c) If the proposed district contains not more than 25 registered voters, Section 41.001(a), Election Code, does not apply to the election.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.
Amended by Acts 2003, 78th Leg., ch. 746, Sec. 1, eff. Sept. 1, 2003.

Sec. 60.033. ELECTION RESULTS. (a) After the election, the presiding judge shall make returns of the result to the temporary

board of directors. The temporary board of directors shall canvass the returns and declare the results.

(b) If a majority of the votes cast in the election favor the creation of the district, the temporary board shall order the district to be created and the persons named on the ballot to serve as the initial permanent directors and shall enter the order in its minutes. If a majority of the votes cast in the election do not favor the creation of the district, the temporary board shall declare the proposition to create the district as defeated and enter the result in its minutes.

(c) A certified copy of the temporary board's order creating the district or of the declaration that the proposition to create the district was defeated shall be sent to the commissioners court of each county included in the district by certified or registered mail. The board shall include with the order or declaration the date of the election, the ballot proposition, and the number of votes cast for or against the proposition. A certified copy of the order creating the district shall be filed in the real property records in the county in which the district is located and shall include the legal description of the district.

(d) In the event 10 or fewer votes are cast in the election, not later than the 90th day following the date of the order canvassing the election, the temporary board shall submit the proceedings of the election, including voter affidavits as to residency and qualification to vote, to the attorney general.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

SUBCHAPTER C. DISTRICT POWERS AND DUTIES

Sec. 60.051. GENERAL POWERS AND DUTIES. (a) A district has the powers and duties that are prescribed by this chapter and that are necessary or desirable to carry out a power or duty expressly or implicitly granted to the district under this chapter.

(b) A district may own or implement more than one project under this chapter.

(c) A district may merge with another district or districts provided that the board of each district agrees to the merger.

(d) A district may perform acts necessary to carry out the purposes of this chapter.

(e) A district may not impose an ad valorem tax.

(f) A district may make payments in lieu of taxes to a school district or county in the manner provided by Sections 60.022(9) and (10).

(g) To the extent consistent with the purposes of this chapter, a district may enter into an installment purchase contract to acquire goods or services for the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.052. ECONOMIC DEVELOPMENT. A district may encourage the economic development of the area in which the district is located by:

(1) fostering the growth of agricultural enterprises;

(2) stimulating innovation in agricultural enterprises;

(3) seeking to eliminate unemployment or underemployment in the state; and

(4) developing or expanding transportation resources for agricultural purposes.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.053. AGRICULTURAL DEVELOPMENT. (a) A district may:

(1) promote all agricultural enterprises, facilities, and services of the district;

(2) encourage the maintenance and conservation of soil and water in the district;

(3) acquire, design, construct, and operate an agricultural enterprise; and

(4) expand, develop, and diversify production, processing, marketing, and export of Texas agricultural products.

(b) A district may acquire property as necessary, including vehicles, farm equipment, and other machinery and related facilities for the harvesting, processing, storage, packaging, distribution, and transportation of agricultural products or by-products.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.054. AGRICULTURAL PROJECTS; NOTICE. (a) The district shall designate as an agricultural project a project that relates to the development of agriculture in the district and surrounding areas and the preservation and conservation of the soil and water in the district for agricultural purposes.

(b) Each project designated under Subsection (a) must be approved by:

(1) the department; and

(2) the county commissioners court of the county in which the project is to be located.

(c) The cost of a project, including interest during construction and costs of issuance of bonds, may be paid from any source, including proceeds of district bonds.

(d) The implementation of a project is a governmental function or service for purposes of Chapter 791, Government Code.

(e) Before the 14th day preceding the date the county commissioners court considers approval of a project not included in the district's creation order, the district shall notify by mail each person who owns land that is immediately adjacent to the proposed project.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.055. TRANSPORTATION DEVELOPMENT; NAVIGATION DISTRICTS. (a) The district may encourage the transportation and distribution of the district's agricultural products through the development and operation of transportation structures necessary to further the purposes of this chapter, including railroads, toll roads, and private roads.

(b) The district may cooperate and contract with any navigation district on any area of mutual interest.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.056. AGREEMENTS; DONATIONS. (a) The district may:

(1) make an agreement with any person for any district purpose, including an agreement:

(A) to acquire, construct, operate, or maintain an agricultural enterprise;

(B) with a municipality or county to provide law enforcement services in the district on a fee basis; or

(C) under a qualified management contract for the operation of an agricultural facility; and

(2) accept a donation, grant, or loan from any person.

(b) The district, a county, and any other political subdivision may contract to implement a district project or assist the district in providing a service authorized by this chapter. A contract under this subsection may provide:

(1) for payment from a district assessment or other revenue; or

(2) that an assessment or other revenue collected from a district project, or from a person using or purchasing a commodity or service from a district project, may be paid or rebated to the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.057. PROPERTY. The district may acquire or dispose of property in any manner, including by:

(1) conveyance;

(2) mortgage; or

(3) lease, as lessor or lessee.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.058. EMINENT DOMAIN. The district may exercise the power of eminent domain for the purpose of acquiring an agricultural facility in order to own, operate, or maintain its functional capabilities or the land on which an agricultural facility is to be built, if the land will be owned by the district. The use of the land may be the subject of a lease agreement entered into by the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.059. RESEARCH. The district may conduct or pay for research for agricultural purposes.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.060. SUITS. (a) The district may sue and be sued.

(b) In a suit against the district, process may be served on a director or registered agent.

(c) The district may not be required to give a bond on an appeal or writ of error in a civil case that the district is prosecuting or defending.

(d) The district may indemnify a director or district employee or a former director or district employee for reasonable expenses and costs, including attorney's fees, incurred by that person in connection with a claim asserted against that person if:

(1) the claim relates to an act or omission of the person when acting in the scope of the person's board membership or district employment; and

(2) the person has not been found liable or guilty on the claim.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.061. ANNEXATION; EXCLUDING TERRITORY. (a) The district may annex land as provided by Section 49.301 or 49.302, Water Code, except that the references in those sections related to taxes do not apply. As provided by those sections, the district may annex land that is not adjacent or contiguous to the district.

(b) A district may not annex territory within the corporate limits of a municipality unless the governing body of the municipality consents in writing to the annexation.

(c) The board on its own motion may call a hearing on the question of the exclusion of land from the district in the manner provided by Section 49.304 or 49.307, Water Code, if the proposed exclusion is practicable, just, or desirable.

(d) The board shall call a hearing on the exclusion of land or other property from the district in the manner provided by Section 49.304 or 49.307, Water Code, if a property owner in the district files with the board secretary a written petition requesting the hearing before the district issues any bonds.

(e) The district may annex land only with the written consent

of the owner of the land to be annexed. The consent must include a statement that the owner of the land to be annexed understands that the land, once included in the district, will be subject to assessments imposed by the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.062. POWERS BEYOND DISTRICT TERRITORY. The district may exercise any of its powers outside the boundaries of the district, except the power to impose assessments and the power of eminent domain, if the board determines that there is a benefit to the district in exercising that power.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.063. NOTICE TO PURCHASERS. (a) Except as provided by Subsection (e), any person who proposes to sell or convey real property located in a district must first give to the purchaser written notice that the property is located in the district. The notice must be given to the prospective purchaser prior to execution of a binding contract of sale and purchase either separately or as an addendum or paragraph of a purchase contract. The purchaser shall sign the notice as evidence of receipt.

(b) At the closing of the purchase and sale, a separate copy of the notice with current information about the district and its right to impose assessments on land within its boundaries, which conveys with the land, shall be executed by the seller and purchaser and recorded in the deed records of the county in which the property is located.

(c) A purchaser or the purchaser's heirs, successors, or assigns may not maintain any action for damages or maintain any action against the seller, title insurance company, real estate brokers, or lienholder, or any agent, representative, or person acting in their behalf, by reason of the imposition of fees or assessments by the district authorized by this chapter. Notice is not required to be given pursuant to this section unless a certified copy of the order creating the district has been recorded in the real property records in the county in which the land is located and such order contains the legal description of the district. A purchaser,

seller, lender, real estate broker, title insurance company, and title insurance agent may conclusively rely on the recorded certified copy of the order.

(d) The board shall prescribe the form for notice under this section.

(e) A seller is not required to give notice under this section if:

(1) the seller is obligated under a written contract to furnish to the buyer a title insurance commitment before the contract closing; and

(2) the purchaser is entitled under the contract to terminate the contract because the property is located in a district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001. Amended by Acts 2003, 78th Leg., ch. 369, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 746, Sec. 2, eff. Sept. 1, 2003.

Sec. 60.0631. FILING INFORMATION. (a) A district shall file with the department and the county clerk in each county in which all or part of the district is located:

(1) the form described by Subsection (b);

(2) a complete and accurate map or plat showing the boundaries of the district; and

(3) a copy of the form for notice to purchasers required by Section 60.063.

(b) The information form filed by a district under this section must include:

(1) the name of the district;

(2) a complete and accurate legal description of the boundaries of the district;

(3) the most recent rate of any assessments in the district;

(4) the total amount of any bonds that have been approved by the voters of the district, other than refunding bonds and any bonds or portion of bonds payable solely from revenues received under a contract with a governmental entity;

(5) the date on which the election to confirm the creation of the district was held; and

(6) a statement of the functions performed by the district.

(c) The information form and map or plat required by this section must be signed by a majority of the members of the board and by each board officer before it is filed with the department and each appropriate county clerk, and each amendment made to an information form, map, or plat must be signed by the members of the board and by each board officer.

(d) The information form required by this section must be filed with each appropriate county clerk and the department not later than 48 hours after the district is approved by an election under Section 60.032 and the election results are certified.

(e) Not later than the seventh day after the date of any change in any information contained in the district information form, map, or plat, the district shall file with the department and each appropriate county clerk an amendment to the information form, map, or plat that describes the change.

(f) If a district is dissolved, annexed, or consolidated, the board shall file with the department and each appropriate county clerk a statement of the effective date of the dissolution, annexation, or consolidation. A person who sells or conveys property within a dissolved district is not required to give notice under Section 60.063.

Added by Acts 2003, 78th Leg., ch. 746, Sec. 3, eff. Sept. 1, 2003.

Sec. 60.064. OFFICIAL SEAL. The district may adopt an official seal for the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.065. LIMIT ON DISTRICT POWERS. The district may not exercise a power unless it furthers the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

SUBCHAPTER D. BOARD OF DIRECTORS

Sec. 60.081. BOARD OF DIRECTORS. (a) The district is governed by a board of directors selected in the manner provided by the order issued under Section 60.030. On approval of the county commissioners

court of each county in which the district is located, the board may increase or decrease the number of directors on the board by resolution if the board finds that to do so is in the best interest of the district.

(b) The directors serve terms as provided by the order issued under Section 60.030.

(c) To serve as a director, a person must be at least 18 years old and:

(1) reside in the district; or

(2) own real property in the district.

(d) The board shall elect from among its members a president, vice president, and secretary. The board by rule may provide for the election of other officers.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.082. VACANCIES. The remaining directors shall fill by appointment for the unexpired term a vacancy in the office of director.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.083. BOARD MEETINGS. The board shall meet at least once every three months and at the call of the presiding officer or a majority of the directors.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.084. MANAGEMENT OF DISTRICT. (a) The board has control over and shall manage the affairs of the district and may employ any person, firm, partnership, or corporation the board considers necessary for conducting the affairs of the district, including engineers, attorneys, financial advisors, a general manager, operations personnel, auditors, and secretaries.

(b) The board may require an officer or employee to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

(c) The board may remove any district employee.

(d) The board may adopt rules necessary or convenient to carry out district powers and duties to govern its affairs.

(e) The board may adopt rules to preserve the public health and welfare concerning the agricultural products submitted to the district for harvesting, processing, distributing, or transporting.

(f) The board may adopt rules on the priority of the use of district property and services, including the payment of fees.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.085. HEARINGS. (a) The board may conduct hearings and take evidence on any matter before the board.

(b) The board may appoint a hearings examiner to conduct a hearing called by the board. The hearings examiner may be a district employee or director.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.086. COMPENSATION AND EXPENSES. A director serves without compensation but is entitled to be reimbursed by the district for a reasonable and necessary expense incurred in performing an official duty.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.087. DIRECTOR'S BOND. (a) As soon as practicable after a director is appointed or elected, the director shall execute a $10,000 bond payable to the district and conditioned on the faithful performance of the director's duties.

(b) Each director's bond must be approved by the board.

(c) The bond shall be filed with and retained by the district.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.088. CONFLICTS OF INTEREST; AFFIDAVIT OF INTEREST. (a) Except as provided in this section:

(1) a director may participate in all board votes and

decisions; and

(2) Chapter 171, Local Government Code, governs conflicts of interest for directors.

(b) Section 171.004, Local Government Code, does not apply to the district. A director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action shall file a one-time affidavit declaring the interest. An additional affidavit is not required if the director's interest changes. After the affidavit is filed with the board secretary, the director may participate in a discussion or vote on that action if:

(1) a majority of the directors have similar interests in the same entity; or

(2) all similar business or charitable entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of another public entity may not participate in the discussion of or vote on a matter regarding a contract with that other public entity.

(d) For purposes of this section, a director has a substantial interest in a business or charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002, Local Government Code.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

SUBCHAPTER E. FINANCES; BONDS

Sec. 60.101. MISCELLANEOUS FINANCIAL POWERS AND DUTIES. (a) The district may:

(1) impose a charge for using land, a facility, or a service the district provides;

(2) issue bonds as provided by this subchapter;

(3) borrow money for any corporate purpose or combination of purposes;

(4) loan money;

(5) invest money under its control in an investment permitted by Chapter 2256, Government Code;

(6) select a depositor;

(7) establish a system of accounts for the district; and

(8) set the fiscal year for the district.

(b) The board by rule shall establish the procedure and number of directors' signatures required to disburse or transfer district money.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.102. REPAYMENT OF ORGANIZATIONAL EXPENSES. The directors may pay:

(1) all costs and expenses necessarily incurred in the creation and organization of the district;

(2) the cost of investigation and making plans, including the cost of feasibility analyses, engineering reports, design fees, and other necessary costs; and

(3) legal fees.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.103. BONDS. (a) The district may issue any type of bond, including an anticipation note or refunding bond, for any district purpose. A bond may be issued under Chapter 1371, Government Code.

(b) When authorizing the issuance of a bond, the district may also authorize the later issuance of a parity or subordinate lien bond.

(c) A district bond must:

(1) mature not later than 40 years after its date of issuance; and

(2) state on its face that the bond is not an obligation of the state.

(d) A district bond may be payable from or secured by:

(1) any source of money, including district revenue, loans, or assessments; or

(2) a lien, pledge, mortgage, or other security interest on district revenue or property.

(e) The district may use bond proceeds for any purpose, including to pay:

(1) into a reserve fund for debt service;

(2) for the acquisition, design, construction, repair, maintenance, or replacement of property, including buildings and

equipment;

(3) administrative and operating expenses;

(4) all expenses incurred or that will be incurred in the issuance, sale, and delivery of the bonds;

(5) the principal of and interest on bonds; or

(6) for the operation of an agricultural enterprise.

(f) The district may contract with a bondholder to impose an assessment to pay for the operation of an agricultural enterprise.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.104. APPROVAL OF ASSESSMENT BONDS. A bond secured by an assessment may not be issued unless the district receives a written petition signed by each owner of the property being assessed requesting the assessment and the issuance of bonds.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.105. AGRICULTURAL FINANCE AUTHORITY BONDS. (a) A district may apply for and receive financial assistance from the Texas Agricultural Finance Authority. The assistance may be funding derived from the proceeds of general obligation or revenue bonds issued by the authority or may be loans, loan guaranties, insurance, or any other benefit offered by the authority for the purposes of expansion, development, and diversification of production, processing, marketing, and export of Texas agricultural products.

(b) A district's proposal under this section is subject to Chapter 58. If a district project involves a value-added agricultural operation, it shall receive preference as provided by Section 58.0211(b).

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.106. TAX INCREMENT FINANCING. (a) A district may use tax increment financing under Chapter 311, Tax Code, in the manner provided by that chapter for a municipality and as modified by this section.

(b) A county commissioners court may establish a reinvestment

zone including property located in the district and enter into a contract with the directors of the district on terms mutually acceptable to the two entities to allow the district to use tax increment financing as provided by Chapter 311, Tax Code.

(c) Property within the corporate limits of a municipality is not eligible for tax increment financing under this section.

(d) Before using tax increment financing, a district must:

(1) obtain the approval of the county commissioners court that issued the district's creation order; and

(2) comply with Section 311.003, Tax Code, as that section applies to a municipality.

(e) For the purpose of tax increment financing under this section, the district board of directors is the board of directors of the reinvestment zone. Section 311.009, Tax Code, does not apply to this chapter.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

SUBCHAPTER F. ASSESSMENTS

Sec. 60.121. GENERAL POWERS. (a) A district may impose an assessment:

(1) for a district expense;

(2) to finance a project or district service; or

(3) for any other purpose authorized by this chapter.

(b) Money derived from an assessment for one purpose may not be borrowed or otherwise used for a purpose other than the purpose for which the assessment is imposed, except as provided by Subsection (c).

(c) The board shall establish a procedure for the distribution or use of money derived from an assessment that exceeds the amount of money necessary to accomplish the purpose for which the assessment was collected.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.122. LIMITS ON ASSESSMENTS. (a) A district may impose an assessment only on real property or on an agricultural product produced on real property included in a petition for assessment.

(b) The owner of an improvement constructed in the district may

waive the right to notice and an assessment hearing and may agree to the imposition of the assessment on the improvement or land and payment of the assessment at an agreed rate.

(c) The district may not impose an assessment on property owned by a utility. For purposes of this subsection, "utility" means a person that provides to the public gas, electricity, telephone, wastewater, or water service.

(d) A district assessment on real property runs with the land and successor landowners are bound to pay district assessments as they are imposed on the land within the district, providing that notice to purchasers was provided to a successor landowner under Section 60.063.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.123. HEARING AND PETITION REQUIRED. A district may impose an assessment only if:

(1) a written petition has been filed with the board that:

(A) requests the assessment;

(B) states the specific purpose of the assessment; and

(C) is signed by each owner of the real property to be assessed or, for an assessment on an agricultural product, by each owner of real property on which the agricultural product subject to the assessment may be produced;

(2) two-thirds of the members of the board vote to impose the assessment;

(3) the board provides notice of a hearing on the proposal under Section 60.129; and

(4) the board holds a hearing on the advisability of the assessment under Section 60.130.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.124. APPORTIONMENT OF COST. The board shall apportion the cost of an assessment according to the special benefits accruing to the real property or product because of the project or service to be financed by the assessment. The cost may be assessed on real property or on an agricultural product produced on real property, as appropriate:

(1) equally by front foot or by square foot of the land area of the real property;

(2) equally by acreage of the real property;

(3) according to the value of the real property or agricultural product as determined by the board, which may consider the value of a structure or improvement on real property;

(4) based upon the productivity of land subject to the assessment or on which the agricultural product subject to the assessment is produced;

(5) in proportion to the value of the agricultural product produced on the real property for the year preceding the year of the assessment; or

(6) according to any other reasonable assessment plan that imposes a fair share of the cost on property or agricultural products similarly benefited.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.125. ASSESSMENT TO FINANCE A PROJECT OR SERVICE. If the board determines the total cost of an assessment to finance a project or service, the board shall impose the assessment against each parcel of land or against the agricultural product against which an assessment may be imposed in the district. The board may impose an annual assessment for a service. The amount of an annual assessment may vary from year to year, but may not exceed the amount necessary to pay the costs and debts of a project to be financed by the assessment.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.126. ASSESSMENT ROLL. (a) The board shall prepare and maintain an assessment roll showing the assessment against each parcel of real property and against all applicable agricultural products and the board's basis for the assessment.

(b) The board shall allow the public to inspect the assessment roll.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.127. INTEREST ON ASSESSMENTS; LIEN. (a) An assessment, including an assessment resulting from an addition or correction to the assessment roll, penalties and interest on an assessment, assessment collection expenses, and reasonable attorney's fees incurred by the district in collecting an assessment are:

(1) a first and prior lien against the property or agricultural product assessed;

(2) superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) the personal liability of and charge against the owners of the property or the agricultural product when the assessment was made, even if the owners are not named in an assessment proceeding.

(b) The lien is effective from the date of the order imposing the assessment until the assessment and any related penalties, interest, collection expenses, or attorney's fees are paid.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.128. MISTAKES. After notice and hearing in the manner required for an original assessment, the board may impose an assessment to correct a mistake in the assessment:

(1) relating to the total cost of the assessment; or

(2) covering a delinquency or collection costs.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.129. NOTICE OF HEARING. (a) In addition to other notice required by law, the board shall provide notice of an assessment hearing in a newspaper with general circulation in the district. The publication must be made not later than the 14th day before the date of the hearing.

(b) The notice must include the:

(1) time and place of the hearing;

(2) purpose of the proposed assessment;

(3) estimated cost of the purpose for which the assessment is proposed, including interest during construction and associated financing costs; and

(4) proposed assessment method.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.130. CONDUCT OF HEARING. (a) A hearing on a proposed assessment may be adjourned from time to time.

(b) If a hearings examiner conducts the hearing, the examiner shall file with the board a report on the examiner's findings under Subsection (d).

(c) The board or hearings examiner shall hear and rule on all objections to a proposed assessment raised at the hearing by an owner of real property that would be subject to the assessment or on which agricultural products subject to the assessment are produced.

(d) The board or hearings examiner shall make findings relating to the:

(1) advisability of the assessment, including the purpose of the assessment;

(2) estimated cost of the assessment;

(3) area benefited by the assessment;

(4) method of assessment; and

(5) method and time for payment of the assessment.

(e) After receiving or issuing the findings required by Subsection (d), the board by order:

(1) shall:

(A) impose the assessment as a special assessment on the property or on the agricultural products; and

(B) specify the method of payment on the assessment; and

(2) may:

(A) amend a proposed assessment;

(B) require an assessment to be paid in periodic installments, including interest;

(C) require an interest charge or penalty for a failure to make timely payment; or

(D) charge an amount to cover a delinquency or collection expense.

(f) If the board orders that an assessment may be paid in periodic installments, the installments must:

(1) be in amounts sufficient to meet the annual costs of the project or service for which the assessment is imposed; and

(2) continue for the number of years required to retire the

indebtedness or pay for the project or service for which the assessment is imposed.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.131. REHEARING. On petition of a property owner contesting an assessment of the owner's real property or agricultural products received not later than the 30th day after the date the assessment order is issued, the board may hold an additional hearing to consider the assessment order.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.132. FILING OF NOTICE OF ASSESSMENT. Not later than the 30th day after the date on which an assessment order is issued, the district shall file a notice of the assessment in the deed records of the county in which the real property to be assessed, or on which the agricultural product to be assessed is produced, is located. The notice must:

(1) provide a description of the real property or the agricultural products that are subject to the assessment;

(2) state the name of the owner of the real property or the agricultural products subject to the assessment; and

(3) describe how to contact the district for further information about the assessment.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.133. APPEAL OF INDIVIDUAL ASSESSMENT. (a) A real property owner or a person who owns an agricultural product against which an assessment is imposed may appeal the assessment to a district court in the county in which the real property assessed, or on which the agricultural product is produced, is located.

(b) The owner must file the notice of appeal with the court not later than the 30th day after the person receives a bill or other notice of the assessment.

(c) The court shall review the appeal by trial de novo.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.134. ASSESSMENT AFTER APPEAL. If the court holds that an assessment is invalid, the board may impose a new assessment in accordance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

SUBCHAPTER G. DISSOLUTION

Sec. 60.151. DISSOLUTION. The district dissolves if:

(1) a majority of the board votes for dissolution; and

(2) all district debts and obligations have been discharged.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

Sec. 60.152. DISPOSITION OF PROPERTY OF DISSOLVED DISTRICT. Prior to dissolution, the board may sell its property. If the purchaser of any district property is not a governmental entity, purchase by the person renders the agricultural facility or other property ineligible to issue tax-exempt securities, to impose assessments, or to be eligible for tax-exempt status.

Added by Acts 2001, 77th Leg., ch. 1393, Sec. 1, eff. June 16, 2001.

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE A. SEED AND FERTILIZER

CHAPTER 61. INSPECTION, LABELING, AND SALE OF AGRICULTURAL AND VEGETABLE SEED

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Agricultural seed" includes the seed of any grass, forage, cereal, or fiber crop, any other kind of seed commonly recognized in this state as agricultural or field seed, and any mixture of those seeds.

(2) "Vegetable seed" includes the seed of any crop that is grown in a garden or on a truck farm and is generally known and sold in this state under the name of vegetable seed.

(3) "Advertisement" means a representation, other than that on a label, disseminated in any manner or by any means and relating to seed within the scope of this chapter.

(4) "Labeling" includes any written, printed, or graphic representation in any form, including a label or an invoice, accompanying and pertaining to seed in bulk or containers.

Acts 1981, 67th Leg., p. 1126, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.002. ADMINISTRATION; RULES. (a) The department shall administer and enforce this chapter and may employ qualified persons and incur expenses as necessary in performing those duties. The number of persons employed shall be set in the General Appropriations Act.

(b) The department may adopt rules as necessary for the efficient enforcement of this chapter. Before adopting rules under this chapter, the department shall conduct a public hearing on the proposed rule or amendment.

(c) The department may establish and maintain or provide for seed testing facilities as necessary to administer this chapter.

(d) Repealed by Acts 1993, 73rd Leg., ch. 978, Sec. 3, eff. Aug. 30, 1993.

(e) The department may cooperate with the United States Department of Agriculture in the enforcement of seed law.

Acts 1981, 67th Leg., p. 1127, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 978, Sec. 1, 3, eff. Aug. 30, 1993.

Sec. 61.003. CLASSIFICATION OF SEEDS. The department by rule may classify and define types, kinds, classes, genera, species, subspecies, hybrids, and varieties of agricultural, vegetable, and weed seeds for the purposes of this chapter.

Acts 1981, 67th Leg., p. 1127, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.004. LABELING OF AGRICULTURAL SEED. (a) Except as otherwise provided by this section, each container of agricultural

seed that is sold or offered or exposed for sale in this state shall bear or have attached in a conspicuous place a plainly written or printed label in English that contains the following information relating to the contents of the container:

(1) the name of the kind or the kind and variety of each agricultural seed component present in excess of five percent of the whole, and the percentage by weight of each;

(2) the lot number or other lot identification;

(3) for each named agricultural seed:

(A) the percentage of germination, exclusive of hard seed, as determined by rule of the department;

(B) the percentage of hard seed, if present; and

(C) the calendar month and year that the test was completed to determine the percentage of germination and hard seed;

(4) the percentage by weight of agricultural seeds other than those named on the label;

(5) the origin, if known, of all agricultural seeds;

(6) the percentage by weight of all weed seeds;

(7) the name and number per pound of each noxious weed seed;

(8) the percentage by weight of inert matter;

(9) the net weight; and

(10) the name and address of the person who labeled the seed or who sells or offers or exposes the seed for sale.

(b) If in accordance with the rules of the department the kind of seed in a container is generally labeled by variety but the label does not state the variety, the label shall show the name of the kind and be printed with: "Variety Not Stated." The label on hybrid seed shall state that the seed is hybrid. A person may not use the word "type" in any labeling in connection with the name of an agricultural seed variety.

(c) If the origin of the seed is unknown, the label shall state that the origin is unknown.

(d) The noxious weed content shall be determined according to the method prescribed under Section 61.008 of this code and the stated content is subject to the tolerances established under that section.

(e) Following the statement of germination and hard seed, a label may show a statement of total germination and hard seed.

(f) If, in accordance with rules of the department, a container

of seed is sold on a pure live seed basis, the label on the container must contain the information required by Subsection (a) of this section, except:

(1) the label need not show:

(A) the percentage by weight of each agricultural seed component, as required by Subdivision (1) of Subsection (a) of this section; or

(B) the percentage by weight of inert matter, as required by Subdivision (8) of Subsection (a) of this section; and

(2) the label must show for each named agricultural seed, instead of the information required by Subdivision (3) of Subsection (a) of this section:

(A) the percentage of pure live seed, determined in accordance with rules of the department; and

(B) the calendar month and year in which the test determining the percentage of pure live seed was completed.

(g) The department by rule may provide that a label show an expiration date in lieu of the calendar month and year of a germination or pure live seed test.

Acts 1981, 67th Leg., p. 1127, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 151, Sec. 1, eff. May 24, 1985.

Sec. 61.005. LABELING OF VEGETABLE SEED. (a) Each container of vegetable seed that is sold or offered or exposed for sale in this state shall bear or have attached in a conspicuous place a plainly written or printed label in English that provides the information relating to the contents of the container required by this section.

(b) If the container weighs one pound or more, the label shall show:

(1) the name of each kind and variety of vegetable seed component present in excess of five percent of the whole and the percentage by weight of each in order of predominance;

(2) the kind and variety of seed;

(3) the lot number or other lot identification;

(4) the germination and the date of the test to determine germination;

(5) the name and number of noxious weed seeds per pound; and

(6) the name and address of the person who labeled the seed.

(c) If the container weighs less than one pound, the label shall show:

(1) the kind and variety of seed;

(2) the calendar month and year of the germination test or the year for which the seed was packaged;

(3) if the percentage of germination is less than the standard prescribed by rule:

(A) the percentage of germination, exclusive of hard seed;

(B) the percentage of hard seed; and

(C) the words "Below Standard" printed in a size not smaller than eight-point type; and

(4) the name and address of the person who labeled the seed.

(d) The labeling requirements of this section are met if the seed is weighed from a properly labeled container in the presence of the purchaser.

(e) The department by rule may provide that a label show an expiration date in lieu of:

(1) the calendar month and year of a germination test; or

(2) the year for which the seed was packaged.

Acts 1981, 67th Leg., p. 1128, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 151, Sec. 2, eff. May 24, 1985.

Sec. 61.006. LABELING OF TREATED SEED. (a) Seed that has been subjected to a treatment, or to which a substance has been applied, for the purpose of reducing, controlling, or repelling disease organisms, insects, or other pests that attack seeds or seedlings shall be labeled in accordance with rules of the department.

(b) The public hearing required by Section 61.002 of this code for rulemaking under this section shall be conducted in Austin.

Acts 1981, 67th Leg., p. 1128, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.007. CERTIFIED SEED. (a) A person may not sell or offer, expose, or transport for sale agricultural or vegetable seed

that is represented by labeling or an advertisement to be certified seed unless:

(1) a seed certifying agency has determined that the seed conforms to standards of purity and identity as to kind, species, subspecies, or variety in accordance with the rules of the certifying agency; and

(2) the seed bears an official label issued by a seed certifying agency certifying that the seed is of a specific class, kind, species, subspecies, or variety.

(b) A person may not sell or offer, expose, or transport for sale seed labeled by variety name but not certified by an official seed certifying agency if it is a variety required by federal law to be sold only as a class of certified seed, except that seed from a certified lot may be labeled by variety name if used in a mixture by, or with the approval of, the owner of the variety.

Acts 1981, 67th Leg., p. 1129, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.008. NOXIOUS WEED CONTENT. The department by rule may classify noxious weeds and establish the rate allowed or prohibit the inclusion of a noxious weed in a container of agricultural or vegetable seed.

Acts 1981, 67th Leg., p. 1129, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.009. GERMINATION AND PURITY TESTING. (a) All agricultural or vegetable seed sold or offered, exposed, or transported for sale in this state shall be tested to determine the percentage of germination.

(b) Except as otherwise provided by this subsection, the germination test shall be performed within nine months, not including the calendar month in which the test was completed, immediately prior to being sold or offered, exposed, or transported for sale. The department by rule may designate a period of time longer than nine months if the department finds that the seed is packaged in a container or under conditions that will maintain the viability of the seed under ordinary conditions of handling during the longer period of time.

(c) At the request of a farmer or dealer, the department may

conduct or provide for the testing of seed for purity and germination. The department may fix by rule and collect fees for tests made under this subsection.

Acts 1981, 67th Leg., p. 1129, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.010. INSPECTION OF SEED. (a) At the time, place, and to the extent the department considers necessary, the department shall sample, inspect, analyze, and test agricultural and vegetable seed transported, sold, or offered or exposed for sale in this state for sowing purposes in order to determine if the seed is in compliance with this chapter. The department shall promptly notify of any violation the person who transported, sold, or offered or exposed the seed for sale.

(b) The department shall adopt rules governing the methods of sampling, inspection, analysis, and testing and the tolerances to be allowed in the administration of this chapter. The rules adopted shall be in general accord with officially prescribed practice in interstate commerce.

(c) In order to gain access to seed or to records from authorized personnel, the department is entitled to enter any public or private premises during regular business hours or any land, water, or air conveyance at any time when the conveyance is accessible.

Acts 1981, 67th Leg., p. 1129, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.011. AGRICULTURAL SEED INSPECTION FEE AND PERMIT. (a) A person who sells, or offers, exposes, or otherwise distributes for sale agricultural seed within this state for planting purposes shall pay an inspection fee in the manner provided by Subsection (b) or (c) of this section. A person may not use both procedures for fee payment. The person shall pay the fee during each germination period that the seed remains offered or exposed for sale. If the germination test has expired on any seed, the custodian of the seed is responsible for payment of the fee.

(b) In order to pay the fee, a person may purchase from the department a label known as the "Texas Tested Seed Label." The department by rule may prescribe the form of the label and the manner of showing the information required by Section 61.004 of this code.

The purchaser shall attach the label to each container of seed sold or offered or otherwise distributed for sale. If the seed is in bulk, the person selling or offering, exposing, or otherwise distributing the seed for sale shall furnish the purchaser one Texas Tested Seed Label for each 100 pounds or fraction of 100 pounds of seed.

(c) Instead of purchasing a Texas Tested Seed Label, a person may pay the fee on the total number of pounds of seed sold or offered, exposed, or otherwise distributed for sale in this state. In order to pay the fee on this basis, the person must apply to the department for a permit. The department shall issue to each applicant a permit bearing an assigned number. The holder of the permit shall:

(1) maintain records, as required by the department, that accurately reflect the total pounds of seed subject to the fee that are handled, sold, or offered or distributed for sale;

(2) file with the department quarterly sworn reports covering the total pounds of all sales of seed subject to the fee sold during the preceding quarter; and

(3) affix to each container of seed subject to the fee or to the invoice of subject seed sold in bulk a plainly written statement of the information required under Section 61.004 of this code.

(d) Quarterly reports filed under Subsection (c)(2) of this section are due within 30 days after the last day of November, February, May, and August. Unless filed in accordance with prior written approval of the department for late filing, a person who does not file the report within the allotted time shall pay to the department a penalty fee, as provided by department rule.

(e) The department is entitled to examine the records of a permittee under Subsection (c) of this section during regular business hours. If the permittee is located outside of this state, the permittee shall maintain the records and information required by Subsection (c) of this section in this state or pay all costs incurred in the auditing of records at another location. The department shall promptly furnish to the permittee an itemized statement of any costs incurred in an out-of-state audit and the permittee shall pay the costs not later than the 30th day following the date of the statement.

(f) The department may set the fee, prescribe and furnish

forms, and require the filing of reports necessary for the payment of the inspection fee.

Acts 1981, 67th Leg., p. 1130, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 978, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 2.22, eff. Sept. 1, 1995.

Sec. 61.012. CANCELLATION OR REVOCATION OF AGRICULTURAL SEED PERMIT. (a) The department may cancel an agricultural seed permit issued under Section 61.011(c) of this code if the permittee fails to observe the rules adopted, to file a report required, or to pay a fee required under that section.

(b) The department shall revoke the permit of any person who fails either to maintain records in this state or to pay for an out-of-state audit under Section 61.011(e) of this code.

Acts 1981, 67th Leg., p. 1131, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.013. VEGETABLE SEED LICENSE. (a) A person may not sell or offer, expose, or otherwise distribute for sale vegetable seed for planting purposes in this state unless the person possesses a valid vegetable seed license issued under this section.

(b) The department may fix by rule and collect a fee for the issuance of a vegetable seed license.

(c) An applicant for a vegetable seed license shall apply for the license on forms prescribed by the department.

(d) A vegetable seed license expires on the first anniversary of the date on which it was issued or renewed.

(e) A person who sells or offers, exposes, or otherwise distributes for sale vegetable seed in containers bearing the name and address of a licensee under this section is not required to be licensed under this section.

Acts 1981, 67th Leg., p. 1131, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2005, 79th Leg., Ch. 44 (H.B. 901), Sec. 1, eff. September 1, 2005.

Sec. 61.0135. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 38, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.08, eff. Sept. 1, 1995.

Sec. 61.014. STOP-SALE ORDER. (a) If the department has reason to believe that agricultural or vegetable seed is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the sale of the seed. The department shall present the order to the owner or custodian of the lot of seed. The person who receives the order may not sell the seed until the seed is discharged by a court under Subsection (b) of this section or until the department finds that the seed is in compliance with this chapter.

(b) The owner or custodian of seed prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the seed is found for a judgment as to the justification of the order and for the discharge of the seed in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this chapter.

Acts 1981, 67th Leg., p. 1131, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.015. SEIZURE OF SEED NOT IN COMPLIANCE. (a) The department may sue in a court of competent jurisdiction in the area in which the seed is located for the seizure of any lot of agricultural or vegetable seed that is not in compliance with this chapter.

(b) If the court finds that the seed is not in compliance with this chapter, the court may condemn the seed. Condemned seed shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in accordance with the law of this state.

(c) The court may not condemn the seed unless the owner or custodian of the seed is given the opportunity to apply to the court for the release of the seed or for permission to condition or relabel the seed to bring it into compliance with this chapter.

Acts 1981, 67th Leg., p. 1131, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.016. EXCEPTIONS. (a) Sections 61.001, 61.003-61.005, and 61.008 of this code do not apply to:

(1) seed or grain not intended for sowing purposes;

(2) seed in storage for cleaning or conditioning, if the label or other records pertaining to the seed bear the phrase "seed for conditioning"; or

(3) seed being transported or consigned to a seed cleaning or conditioning establishment for cleaning or conditioning, if the invoice or labeling accompanying the seed bears the phrase "seed for conditioning."

(b) The exceptions provided by Subsection (a) of this section do not affect the criminal liability of a person for false or misleading labeling or advertising of unclean seed under Section 61.018 of this code.

(c) This chapter does not prevent one farmer from selling to another farmer seed grown on his or her own farm without having the seed tested or labeled as required by this chapter if the seed:

(1) is not advertised in the public communications media

outside the vendor's home county;

(2) is not sold or offered or exposed for sale by an individual or organization for the farmer; and

(3) is not shipped by a common carrier.

Acts 1981, 67th Leg., p. 1132, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.017. PROSECUTIONS. (a) If the department has reason to believe that a person has violated any provision of this chapter, the department shall conduct a private hearing on the alleged violation, giving the accused the opportunity to appear and, either in person or by agent or attorney, present evidence. After the hearing, or without a hearing if the accused or the agent or attorney of the accused fails or refuses to appear, the department may file with the appropriate district or county attorney the evidence of the violation or take other steps necessary to institute the prosecution of the violation. Venue for the prosecution is in the area in which the violation occurred.

(b) The county or district attorney or the attorney general, as applicable, shall institute proceedings at once against the person charged with the violation, if in his or her judgment the information submitted warrants the action.

(c) After judgment by a court in any case arising under this chapter, the department may publish any information pertinent to the issuance of the judgment in any media that it considers appropriate.

Acts 1981, 67th Leg., p. 1132, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 61.018. PENALTIES. (a) A person commits an offense if the person sells or offers, exposes, or transports for sale agricultural or vegetable seed within this state that:

(1) has not been tested for germination in accordance with Section 61.009 of this code;

(2) is not labeled in accordance with Section 61.004, 61.005, or 61.006 of this code, as applicable;

(3) has false or misleading labeling;

(4) is represented by a false or misleading advertisement;

(5) contains noxious weed seeds in excess of the limitations per pound, allowing for tolerances, prescribed under

Section 61.008 of this code;

(6) has labeling or advertising subject to this chapter that represents the seed to be certified in violation of Section 61.007 of this code; or

(7) is labeled by variety name in violation of Section 61.007(b) of this code.

(b) A person commits an offense if the person:

(1) detaches, alters, defaces, or destroys any label provided for in this chapter or the rules adopted under this chapter;

(2) alters or substitutes seed in a manner that may defeat the purposes of this chapter;

(3) disseminates a false or misleading advertisement concerning agricultural or vegetable seed;

(4) fails to comply with a stop-sale order issued under Section 61.014 of this code;

(5) hinders or obstructs an authorized person in the performance of duties under this chapter;

(6) uses the word "type" in violation of Section 61.004(b) of this code; or

(7) violates any other provision of this chapter.

(c) An offense under this section is a Class C misdemeanor.

(d) If a person is prosecuted under this section for selling or offering or exposing for sale in this state agricultural or vegetable seed that is incorrectly labeled or represented as to kind, variety, type, treatment, or origin and that cannot be identified by examination, it is a defense to prosecution that the defendant obtained an invoice or grower's declaration giving kind, kind and variety, or kind and type, treatment, and origin, if required.

Acts 1981, 67th Leg., p. 1132, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 39, eff. Sept. 1, 1989.

CHAPTER 62. SEED AND PLANT CERTIFICATION

Sec. 62.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Seed and Plant Board.

(2) The term "certified seed" or "certified plant" means a seed or plant that has been determined by a seed or plant certifying agency to meet agency rules and standards as to genetic purity and

identity.

(3) "Plant" includes plant parts.

Acts 1981, 67th Leg., p. 1134, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.002. STATE SEED AND PLANT BOARD. (a) The State Seed and Plant Board is an agency of the state. The board is composed of:

(1) one individual, appointed by the president of Texas A&M University, from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A&M University;

(2) one individual, appointed by the president of Texas Tech University, from the Department of Plant and Soil Sciences, Texas Tech University;

(3) one individual, appointed by the commissioner, licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;

(4) one individual, appointed by the commissioner, who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual, appointed by the commissioner, actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6) the head of the seed division of the department.

(b) An individual appointed from a state university or the department serves on the board as an ex officio member. A member serves for a term of two years and until a successor has qualified. Members serve without compensation but are entitled to reimbursement by the state for actual expenses incurred in the performance of their duties.

(c) A member whose employment is terminated with the agency or department from which the member was appointed or who ceases to be engaged in the business or professional activity that the member was appointed to represent vacates membership on the board.

(d) The commissioner shall designate a member of the board as the chairman to serve in that capacity at the pleasure of the commissioner. The board annually shall elect a vice-chairman and secretary. The board shall meet at times and places determined by the chairman.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin

of the appointees.

Acts 1981, 67th Leg., p. 1134, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 185, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 729, Sec. 14, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 311, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 1.17, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.04, eff. September 1, 2009.

Sec. 62.0021. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Notwithstanding Chapter 551, Government Code, the board may hold an open or closed meeting by telephone conference call if immediate action is required and the convening at one location of a quorum of the board is inconvenient for any member of the board.

(b) The meeting is subject to the notice requirements applicable to other meetings.

(c) The notice of the meeting must specify as the location of the meeting the location where meetings of the board are usually held.

(d) Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape-recorded. The tape recording shall be made available to the public.

Added by Acts 1993, 73rd Leg., ch. 74, Sec. 1, eff. May 5, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), eff. Sept. 1, 1995.

Sec. 62.0022. BOARD CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of

business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0023. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 62.002;

(2) does not maintain during service on the board the qualifications required by Section 62.002;

(3) violates a prohibition established by Section 62.0022;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 4.09(1), eff. September 1, 2009.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.09(1), eff. September 1, 2009.

Sec. 62.0024. STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0025. BOARD MEETINGS; ADMINISTRATIVE PROCEDURE. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(b) The board is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0026. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Sec. 62.0027. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) Chapter 64, this chapter, and the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the requirements of:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code; and

(C) Chapter 2001, Government Code;

(6) the requirements of the conflict of interest laws and other laws relating to public officials; and

(7) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.18, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.05, eff. September 1, 2009.

Sec. 62.003. CLASSES OF CERTIFIED SEED. (a) The four classes of certified seed and plants are Breeder, Foundation, Registered, and Certified.

(b) A Breeder seed or Breeder plant is directly controlled by the originating or sponsoring person or the person's designee and is the primary source for the production of seed and plants of the other classes.

(c) A Foundation seed or Foundation plant is the progeny of Breeder or Foundation seed or plants and is produced and handled under the procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Foundation class of seed or plants for the purpose of maintaining genetic purity and identity.

(d) A Registered seed or Registered plant is the progeny of Breeder or Foundation seed or plants and is produced and handled under procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Registered class of seed or plants for the purpose of maintaining genetic purity and identity.

(e) A Certified seed or Certified plant is the progeny of Breeder, Foundation, or Registered seed or plants, except as otherwise provided by federal law, and is produced and handled under

procedures established, in accordance with federal requirements, by a seed or plant certifying agency for the Certified class of seed or plants for the purpose of maintaining genetic purity and identity.

Acts 1981, 67th Leg., p. 1134, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.004. ELIGIBILITY FOR AND STANDARDS OF CERTIFICATION. (a) The board may establish, not inconsistent with federal law, the eligibility of various kinds and varieties of seed and plants for genetic purity and identity certification and the procedures for that certification.

(b) The board may establish standards of genetic purity and identity, not inconsistent with federal law, for classes of certified seed and plants for which the board determines that standards are desirable. In establishing the standards, the board may consider all factors affecting the quality of seed and plants.

(c) The board shall report to the department the kinds and varieties of seed and plants eligible for certification and the standards adopted for certification eligibility.

Acts 1981, 67th Leg., p. 1135, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.005. LICENSING OF PRODUCERS OF FOUNDATION, REGISTERED, OR CERTIFIED SEED. (a) A person who wants to produce a certified class of seed or plant for which the board has established standards of genetic purity and identity may apply to the board for licensing as a Foundation, Registered, or Certified producer of seed or plants. To be licensed as a producer, a person must satisfy the board that:

(1) he or she is of good character and has a reputation for honesty;

(2) his or her facilities meet board requirements for producing and maintaining seed or plants for the certification generations desired; and

(3) he or she has met any other board requirements as to knowledge of the production or maintenance of seed or plants for the certification generations for which he or she applies to be licensed.

(b) The board may adopt rules governing the production and handling by licensed producers of certified classes of seed and plants to ensure the maintenance of genetic purity and identity.

(c) A license to produce Foundation, Registered, or Certified seed or plants is not transferable and is permanent unless revoked as provided in this chapter. A person licensed as a producer of Foundation, Registered, or Certified seed or plants is eligible to produce certified seed or plants, as provided in the license, of the class for which he or she is licensed or of any lower class of certified seed or plants, as determined by the board.

(d) An application for licensing as a Foundation, Registered, or Certified producer of seed or plants must be accompanied by a fee, as provided by department rule.

Acts 1981, 67th Leg., p. 1135, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 40, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.23, eff. Sept. 1, 1995.

Sec. 62.006. REGISTRATION OF PLANT BREEDERS. (a) A person engaging in the development, maintenance, or production of seed or plants for which standards of genetic purity and identity have been established by the board may apply to the board for registration as a plant breeder. The applicant shall apply on forms prescribed by the board and shall include with the application a registration fee, as determined by the board. To be registered as a plant breeder, a person must satisfy the board that the person is skilled in the science of plant breeding. The board may require skill to be shown by evidence of accomplishments in the field and may require an oral or written examination in the subject.

(b) A certificate of registration is not transferable and is permanent unless revoked as provided in this chapter.

Acts 1981, 67th Leg., p. 1135, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.24, eff. Sept. 1, 1995.

Sec. 62.0065. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing or registration examination is administered under this chapter, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of

the examination not later than the 14th day after the date on which the board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day. The board may require a testing service to notify examinees of the results of an examination.

(b) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 41, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.19, eff. Sept. 1, 1995.

Sec. 62.008. CERTIFICATION OF SEED AND PLANTS. (a) The department is the certifying agency in Texas for the certification of seed and plants. The department shall employ a sufficient number of inspectors to carry out the inspection provisions of this chapter. Inspectors must meet qualifications set by the board.

(b) A person who is licensed as a Foundation, Registered, or Certified seed or plant producer or who is registered as a plant breeder is eligible to have seed or plants of an eligible class and variety certified by the department. On request by a licensed producer or a registered plant breeder to have seed or plants certified, the department shall inspect the producer's or registrant's fields, facilities, and seed or plants. Inspection may include tests approved by the board and carried out by inspectors under the authority of the department.

(c) After inspection, if the department determines that the production of seed or plants has met the standards and rules prescribed by the board, it shall cause to be attached to each container of the product a label identifying the seed or plant and the certified class and including other information required by statute or by rule of the board. The department shall prescribe the format of the label.

(d) The department shall fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of

inspection and labels.

Acts 1981, 67th Leg., p. 1137, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 52, Sec. 9, eff. May 7, 2001.

Sec. 62.009. SEED AND PLANTS FROM OUTSIDE THE STATE. (a) The department may adopt rules, including testing requirements and standards, which must be met before seed or plants represented to be of a certified class may be shipped into the state for distribution in the state. The rules adopted shall be designed to ensure buyers in the state of having available certified seed and plants of known origin, genetic purity, and identity and shall correspond to appropriate rules used in certifying seed and plants produced in Texas.

(b) The department may require inspections of seed and plants represented to be of a certified class and shipped into the state for distribution in the state and may collect fees to cover costs of inspection, as determined by the department. The department may require inspection fee payment before distribution in the state.

(c) A person may not distribute in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the person has first complied with any rules, including testing requirements, adopted by the department for seed or plants shipped into the state.

(d) A person may not sell or offer for sale in this state seed or plants represented to be of a certified class and shipped into the state for distribution in the state, unless the seed or plants have been certified by an official certifying agency in the state, province, or country of origin or have been certified by the department.

(e) Seed or plants shipped into the state for distribution in the state which are represented to be of a certified class and which are found by the department after investigation to violate the requirements of this section are restricted from distribution. In addition, the department may order the seed or plants in violation confiscated and retained under general supervision of the department. An owner or consignee of restricted or confiscated seed or plants may appeal the order by filing an appeal within 10 days of the order. Appeal is in the county court of the county where the seed or plants

are restricted or were confiscated. The appeal in county court is by trial de novo. If no appeal is filed as provided in this section or if after an appeal in county court, the department's action is not reversed, the department may destroy confiscated seed or plants.

Acts 1981, 67th Leg., p. 1137, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 62.010. REVOCATION, MODIFICATION, OR SUSPENSION OF REGISTRATION OR LICENSE. (a) The department shall revoke, modify, or suspend the registration or license of a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants, place on probation a person whose registration or license has been suspended, or reprimand a registrant or licensee if the person makes exaggerated claims for products, fails to observe any rule governing the maintenance and production of a certified class of seed or plants that he or she is registered or licensed to produce or maintain, or violates another requirement of this chapter or a rule adopted by the board or the department under this chapter.

(b) If a suspension of a license or registration is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department revokes a registration or license, the department shall order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(d) If the department proposes to revoke, modify, or suspend a person's registration or license, the person is entitled to a hearing conducted under Section 12.032. The board shall prescribe procedures by which all decisions of the department to revoke, modify, or suspend a registration or license issued under this chapter are appealable to the board.

Acts 1981, 67th Leg., p. 1138, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 42, eff. Sept. 1,

1989; Acts 1995, 74th Leg., ch. 419, Sec. 3.09, eff. Sept. 1, 1995.

Sec. 62.011. PENALTIES. (a) A person commits an offense if the person:

(1) sells or offers for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "from officially inspected fields," "state inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified as Foundation, Registered, or Certified seed or plants;

(2) represents himself or herself to be a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants unless he or she has been registered or licensed under this chapter;

(3) sells or offers for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with this chapter or with the rules adopted under this chapter;

(4) sells or offers for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented;

(5) violates Section 62.007(c) of this code; or

(6) violates Section 62.009(c), (d), or (e) of this code.

(b) An offense under Subsection (a)(1), (a)(2), (a)(5), or (a)(6) of this section is a Class C misdemeanor.

(c) An offense under Subsection (a)(3) or (a)(4) of this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1138, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 43, eff. Sept. 1, 1989.

CHAPTER 63. COMMERCIAL FERTILIZER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of regents of The Texas A&M

University System.

(2) "Brand" means the term, design, trademark, or other specific designation under which a commercial fertilizer is distributed.

(3) "Bulk" means any lot of commercial fertilizer that is not in a closed container at the time it passes to the possession of the consumer and includes that fertilizer at any stage of distribution.

(4) "Container" means a bag, box, carton, bottle, object, barrel, package, apparatus, device, appliance, or other item of any capacity into which a commercial fertilizer is packed, poured, stored, or placed for handling, transporting, or distributing.

(5) "Customer-formula fertilizer" means a mixture of commercial fertilizers or fertilizer materials and other agricultural products such as seed and pesticides, any part of which is furnished by the person who processed, mixed, blended, or prepared the mixture and which is formulated according to the specific instructions of the purchaser.

(6) "Director" means the director of the Texas Agricultural Experiment Station.

(7) "Distribute" means sell, offer for sale, expose for sale, consign for sale, barter, exchange, transfer possession or title, or otherwise supply.

(8) "Fertilizer material" means a solid or nonsolid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop or for compounding a mixed fertilizer. The term does not include animal manure, plant remains, or a mixture of those substances, for which no specific nutrient analysis claim indicates guaranteed nutrient levels.

(9) "Grade" means the percentages stated in whole numbers of total nitrogen, available phosphoric acid (P_2O_5), and soluble potash (K_2O) guaranteed in a fertilizer.

(10) "Label" means a display of written, printed, or graphic matter on or affixed to a container or on an invoice or delivery slip.

(11) "Mixed fertilizer" means a solid or nonsolid product that results from the combination, mixture, or simultaneous

application of two or more fertilizer materials by a manufacturer, processor, mixer, or contractor. The term may include a specialty fertilizer or manipulated manure, but does not include animal manure, plant remains, or a mixture of those substances, for which no specific nutrient analysis claim indicates guaranteed nutrient levels.

(12) "Manipulated manure" means a substance composed of animal manure, plant remains, or a mixture of those substances, for which a specific nutrient analysis claim indicates guaranteed nutrient levels.

(13) "Official sample" means a sample taken by the service and designated as official by the service.

(14) "Registrant" means a person who registers a commercial fertilizer under this chapter.

(15) "Service" means the Texas Feed and Fertilizer Control Service.

(16) "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use, including use on or in home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, or nurseries. The term does not include animal manure, plant remains, or a mixture of those substances, for which no specific nutrient analysis claim indicates guaranteed nutrient levels.

(17) "Ton" means a net weight of 2,000 pounds avoirdupois or 1,000 kilograms metric.

(18) "Weight" means the net weight of a container of commercial fertilizer expressed in either the avoirdupois or metric system.

Acts 1981, 67th Leg., p. 1140, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 1837, ch. 349, art. 1, Sec. 1, eff. Sept. 1, 1983.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 779 (H.B. 1969), Sec. 1, eff. September 1, 2011.

Sec. 63.002. COMMERCIAL FERTILIZER. (a) Except as otherwise provided by this section, a substance is a commercial fertilizer subject to this chapter if it is:

(1) a fertilizer material;
(2) a mixed fertilizer;
(3) a customer-formula fertilizer; or
(4) another substance, material, or element, including a pesticide, that is intended for use or is used as an ingredient or component of a mixture of materials that is used, designed or represented for use, or claimed to have value, in promoting plant growth.

(b) Unprocessed, unpackaged, or unmanipulated lime, limestone, marl, or gypsum is not a commercial fertilizer subject to this chapter.

(c) Animal manure, plant remains, or mixtures of those substances are not commercial fertilizers subject to this chapter if no specific nutrient analysis claim indicates guaranteed nutrient levels.

(d) A plant food element or additive other than nitrogen, phosphorus, or potassium, determinable by an acceptable laboratory method, may be incorporated into a commercial fertilizer and guaranteed only if, and in the manner, authorized by rule of the director. Any additional plant food element or additive is subject to the inspection, analysis, and other provisions of this chapter.

Acts 1981, 67th Leg., p. 1141, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 1837, ch. 349, art. 1, Sec. 1, eff. Sept. 1, 1983.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 779 (H.B. 1969), Sec. 2, eff. September 1, 2011.

Sec. 63.0025. CERTAIN ANALYSES NOT GUARANTEE OF NUTRIENT LEVELS. A representative laboratory analysis conducted for purposes of fulfilling a requirement established by a federal agency or a state agency other than the department may not:

(1) be considered a guarantee of nutrient levels for:
(A) fertilizer material;
(B) mixed fertilizer;
(C) manipulated manure; or
(D) specialty fertilizer; or
(2) be used to determine whether animal manure, plant

remains, or mixtures of those substances are commercial fertilizers under Section 63.002(c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 779 (H.B. 1969), Sec. 3, eff. September 1, 2011.

Sec. 63.003. ADMINISTRATION. (a) The Texas Feed and Fertilizer Control Service is under the direction of the director of the Texas Agricultural Experiment Station, who is responsible for exercising the powers and performing the duties assigned to the service by this chapter.

(b) The service may employ personnel necessary to perform its duties.

(c) The director may appoint a state chemist whose responsibilities may include the making of chemical analyses and tests required by this chapter.

Acts 1981, 67th Leg., p. 1142, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1837, ch. 349, art. 1, Sec. 1, eff. Sept. 1, 1983.

Sec. 63.004. RULES; STANDARDS. Following a public hearing, the service may adopt rules relating to the distribution of commercial fertilizers that the service finds necessary to carry into full effect the intent and meaning of this chapter including rules defining and establishing standards for commercial fertilizer. To the extent practicable, rules that define and establish standards for commercial fertilizer shall be in harmony with the official standards of the Association of American Plant Food Control Officials.

Acts 1981, 67th Leg., p. 1142, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1837, ch. 349, art. 1, Sec. 1, eff. Sept. 1, 1983.

Sec. 63.005. PUBLICATIONS. (a) At least annually, the service shall publish:

(1) information concerning the sales of commercial fertilizers, together with data on those sales that the service

considers advisable;

(2) the results of the analyses of official samples of commercial fertilizers sold within the state as compared to the guaranteed analyses of those fertilizers;

(3) a financial statement showing the receipt and expenditure of funds under this chapter; and

(4) other information relating to fertilizer as the service considers necessary or desirable to the public interest.

(b) The service shall prescribe the form of a publication required under this section.

(c) The report on sales of commercial fertilizers shall separately show information concerning the sales for the fall and spring seasons.

(d) A publication under this section may not disclose the scope of operations of any person.

Acts 1981, 67th Leg., p. 1142, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1837, ch. 349, art. 1, Sec. 1, eff. Sept. 1, 1983.

Sec. 63.006. APPLICATION. (a) This chapter does not apply to, restrict, or void the sale of a commercial fertilizer by an importer, manufacturer, or manipulator to an importer, manufacturer, or manipulator who mixes fertilizers for distribution. This chapter does not prevent the free and unrestricted shipment of a commercial fertilizer to a manufacturer or manipulator who has registered the brand name as required by this chapter.

(b) This chapter does not apply to the mixing, milling, or processing of a material produced by a purchaser of commercial fertilizer or acquired by the purchaser from a source other than the person who mixed or processed the material.

Acts 1981, 67th Leg., p. 1142, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1837, ch. 349, art. 1, Sec. 1, eff. Sept. 1, 1983.

Sec. 63.007. EFFECT ON OTHER LAW. This chapter preempts and supersedes any ordinance, order, or rule adopted by a political subdivision of this state relating to the regulation, registration,

packaging, labeling, sale, distribution, use, or application of commercial fertilizer.

Added by Acts 2009, 81st Leg., R.S., Ch. 120 (H.B. 2527), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. GRADES

Sec. 63.021. GRADE STATEMENTS. Any statement of the grade of a commercial fertilizer shall be stated in whole numbers in the following order:

(1) total nitrogen;

(2) available phosphoric acid; and

(3) soluble potash.

Acts 1981, 67th Leg., p. 1143, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. PERMIT AND REGISTRATION

Sec. 63.031. PERMIT AND REGISTRATION REQUIRED. (a) A person may not manufacture or distribute a commercial fertilizer in this state without a valid current permit issued by the service, and a person may not manufacture or distribute a commercial fertilizer in this state, other than customer-formula fertilizer, unless the person first registers the fertilizer with the service.

(b) An application for a permit or registration shall be submitted on a form prescribed by the service.

(c) Registration is required for each distinct mixture, formulation, or type of commercial fertilizer manufactured or distributed in this state.

(d) A person is not required to register a commercial fertilizer that has been registered by another person.

Acts 1981, 67th Leg., p. 1143, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1842, ch. 349, art. 1, Sec. 2, eff. Sept. 1, 1983.

Sec. 63.032. APPLICATION FOR REGISTRATION. (a) Each application for registration of a commercial fertilizer shall include the following information relating to the fertilizer:

(1) the name and principal address of the person responsible for manufacture and distribution;

(2) the brand or the name under which the fertilizer is to be distributed; and

(3) other information that the service may by rule require.

(b) The service may prescribe and furnish forms for registration of commercial fertilizers under this chapter. The service shall provide a registrant with a copy of the approved registration.

Acts 1981, 67th Leg., p. 1143, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1842, ch. 349, art. 1, Sec. 2, eff. Sept. 1, 1983; Acts 2003, 78th Leg., ch. 498, Sec. 1, eff. June 20, 2003.

Sec. 63.033. TERM OF PERMIT AND REGISTRATION. A permit or registration issued under this chapter is permanent unless:

(1) the service revokes, suspends, annuls, or amends the permit or registration;

(2) the permittee or registrant withdraws or cancels the permit or registration; or

(3) the service requires a new permit or new registration.

Acts 1981, 67th Leg., p. 1143, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1842, ch. 349, art. 1, Sec. 2, eff. Sept. 1, 1983.

Sec. 63.034. REFUSAL OR REVOCATION OF PERMIT. Following notice and a hearing, the service may revoke, suspend, annul, or amend an existing permit or may refuse to issue a permit if it finds that the permittee or applicant has:

(1) been convicted of a crime for which a permit may be revoked, suspended, annulled, amended, or refused under Chapter 53, Occupations Code;

(2) refused or after notice failed to comply with this chapter and rules adopted under this chapter; or

(3) used fraudulent or deceptive practices in attempting evasion of this chapter or a rule adopted under this chapter.

Acts 1981, 67th Leg., p. 1144, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1842, ch. 349, art. 1, Sec. 2, eff. Sept. 1, 1983; Acts 2001, 77th Leg., ch. 1420, Sec. 14.721, eff. Sept. 1, 2001.

Sec. 63.035. REFUSAL OR REVOCATION OF REGISTRATION. Following notice and a hearing, the service may revoke, suspend, annul, or amend an existing registration of or may refuse a registration to a commercial fertilizer if the service finds that:

(1) the commercial fertilizer:

(A) is not in compliance with this chapter or a rule adopted under this chapter; or

(B) contains a pesticide as defined by Chapter 76 of this code that has not been registered in accordance with that chapter; or

(2) the registrant or applicant has:

(A) been convicted of a crime for which registration may be revoked, suspended, annulled, amended, or refused under Chapter 53, Occupations Code;

(B) refused or after notice failed to comply with this chapter and rules adopted under this chapter; or

(C) used fraudulent or deceptive practices in attempted evasion of this chapter or a rule adopted under this chapter.

Acts 1981, 67th Leg., p. 1144, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1842, ch. 349, art. 1, Sec. 2, eff. Sept. 1, 1983; Acts 2001, 77th Leg., ch. 1420, Sec. 14.722, eff. Sept. 1, 2001.

SUBCHAPTER D. LABELING

Sec. 63.051. LABELING OF COMMERCIAL FERTILIZER. (a) Except as provided by Subsection (d) of this section, each container of commercial fertilizer distributed in this state, other than customer-formula fertilizer, must have a label with the following information:

(1) the name and principal address of the person responsible for manufacture and distribution;

(2) the brand, grade, and name under which the fertilizer is to be distributed;

(3) the net weight of the fertilizer in the container;

(4) the guaranteed analysis of the plant nutrients in the fertilizer, listing the minimum percentages of primary, secondary, and micro plant nutrients, and other additives, in accordance with rules of the service; and

(5) other information that the service may by rule prescribe.

(b) The guaranteed analysis of any unacidulated mineral phosphatic materials and basic slag shall guarantee both the total and available phosphoric acid and the degree of fineness. The guaranteed analysis of bone, tankage, and other organic phosphate materials shall guarantee the total phosphoric acid. All materials included in the guaranteed analysis are subject to inspection and determination by laboratory procedures in accordance with rules of the service.

(c) The manufacturer or other person distributing packaged commercial fertilizer shall affix the label required by this section to the container of fertilizer or cause it to be printed on the side of the container in the manner prescribed by the service. The label information must be grouped together and plainly printed in English in the size or of type prescribed by the service.

(d) The manufacturer or other person distributing commercial fertilizer in bulk or in a container that holds an amount exceeding 110 pounds dry weight or 55 gallons liquid shall at the time of delivery furnish the purchaser with a written or printed statement showing the information required by this section.

Acts 1981, 67th Leg., p. 1144, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1846, ch. 349, art. 1, Sec. 3, eff. Sept. 1, 1983.

Sec. 63.052. MISLEADING LABEL. The label of a commercial fertilizer may not be misleading in any particular.

Acts 1981, 67th Leg., p. 1144, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 63.053. LABELING OF CUSTOMER-FORMULA FERTILIZER. A person distributing customer-formula fertilizer in this state shall at the time of delivery furnish to the purchaser a label showing:

(1) the name and address of the purchaser;
(2) the date of sale;
(3) the grade of the mixture;
(4) the guaranteed analysis of the plant nutrients and other additives;
(5) the net weight of the fertilizer; and
(6) the name and address of the registrant.

Added by Acts 1983, 68th Leg., p. 1846, ch. 349, art. 1, Sec. 3, eff. Sept. 1, 1983.

Sec. 63.054. GENERAL LABEL RESTRICTIONS. Except as authorized by this chapter or a rule of the service, the label of a commercial fertilizer may not:

(1) advertise, name, promote, emphasize, or otherwise direct attention to one or more components or ingredients in the product unless the percentage and common name of the component or ingredient is clearly and prominently declared; or

(2) contain the name of another manufacturer or person or a product of another manufacturer or person.

Acts 1981, 67th Leg., p. 1144, ch. 388, Sec. 1, eff. Sept. 1, 1980. Renumbered from Sec. 63.053 and amended by Acts 1983, 68th Leg., p. 1846, ch. 349, art. 1, Sec. 3, eff. Sept. 1, 1983.

SUBCHAPTER E. FEES

Sec. 63.071. INSPECTION FEE. (a) For each state fiscal year, the registrant of a commercial fertilizer shall pay to the service an inspection fee as prescribed by this section.

(b) Except as otherwise provided by this section, the inspection fee for a commercial fertilizer distributed in this state is 30 cents per ton of fertilizer. With the approval of the board, the director may reduce or increase the inspection fee in increments of two cents per ton per fiscal year.

(c) A person distributing in this state a commercial fertilizer product packaged in individual containers of five pounds or less shall pay, for each distinct commercial fertilizer product so distributed, a flat rate inspection fee of $50 for each fiscal year or part of a fiscal year in which the distribution is made.

(d) A registrant paying an inspection fee under Subsection (b) of this section shall pay in advance a minimum annual inspection fee of $100 per fiscal year. All advance inspection fees collected under this section shall be credited towards the first tonnage inspection owed by the registrant accruing in that fiscal year.

(e) If more than one person is involved in the distribution of a commercial fertilizer, the last person who distributes to a dealer or consumer who is a nonregistrant shall pay the fee.

(f) A person is not required to pay an inspection fee on a portion of a customer-formula fertilizer that is produced by the purchaser or acquired by the purchaser from a source other than the person who mixed, milled, or processed the mixture.

(g) The service may by rule provide that a person who manufactures or distributes a commercial fertilizer solely for investigational, experimental, or laboratory use by qualified persons is not required to pay an inspection fee on the fertilizer if the use is in the public interest.

(h) A person is not required to pay an inspection fee on compost as defined by Section 361.421, Health and Safety Code.

Acts 1981, 67th Leg., p. 1145, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1848, ch. 349, art. 1, Sec. 4, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 899, Sec. 1.16, eff. Aug. 30, 1993.

Sec. 63.072. TONNAGE REPORT AND INSPECTION FEE PAYMENT. (a) The person responsible for paying a fertilizer inspection fee shall file with the service a sworn report either stating that no tonnage of commercial fertilizer was distributed during the preceding reporting period or setting forth the tonnage of all the commercial fertilizer that the person manufactured or distributed in this state during the preceding reporting period. The person shall file the report:

(1) quarterly if the total amount of inspection fees in a year is $100 or more; or

(2) annually if the total amount of inspection fees in a year is less than $100.

(b) Each tonnage report must be accompanied by payment of the inspection fee due based on the tonnage reported for that quarter or

year, as applicable.

(c) A tonnage report and inspection fee payment is due:

(1) on or before the 31st day following the last day of November, February, May, and August, for persons reporting quarterly; and

(2) on or before the 31st day following the last day of August, for persons reporting annually.

(d) The service may prescribe and furnish forms as necessary under this section.

Acts 1981, 67th Leg., p. 1145, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1848, ch. 349, art. 1, Sec. 4, eff. Sept. 1, 1983; Acts 2003, 78th Leg., ch. 682, Sec. 1, eff. Sept. 1, 2003.

Sec. 63.073. PENALTY FOR LATE FILING OR PAYMENT. (a) If a person does not file a report or pay the inspection fee as required by Section 63.072, the registrant shall pay a penalty equal to 15 percent of the inspection fee due or $50, whichever is greater.

(b) A penalty, together with the delinquent inspection fee, is due before the 61st day following the last day of the quarter, for quarterly reports, or of August, for annual reports. The service shall cancel the registration of a registrant who fails to pay the penalty and delinquent inspection fee within that time period.

Acts 1981, 67th Leg., p. 1145, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1848, ch. 349, art. 1, Sec. 4, eff. Sept. 1, 1983; Acts 2003, 78th Leg., ch. 682, Sec. 2, eff. Sept. 1, 2003.

Sec. 63.074. RECORDS; ADDITIONAL REPORTS; AUDITS. (a) For the purpose of determining the accurate tonnage of commercial fertilizers distributed in this state or identifying or verifying tonnage reports, the service may require each registrant to maintain records or file additional reports.

(b) The service is entitled to examine at reasonable times the records maintained under this section.

(c) A registrant shall preserve and maintain in usable condition all records required by this section and shall retain the

records for a period of at least two years. The service may require a registrant to retain records for a period longer than two years if the service determines it to be in the public interest.

(d) If a registrant is located outside this state, the registrant shall maintain the records and information required by this section in this state or pay all costs incurred in the auditing of records at another location. The service shall promptly furnish to the registrant an itemized statement of any costs incurred in an out-of-state audit and the registrant shall pay the costs before the 31st day following the date of the statement.

Acts 1981, 67th Leg., p. 1145, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1848, ch. 349, art. 1, Sec. 4, eff. Sept. 1, 1983; Acts 2003, 78th Leg., ch. 682, Sec. 3, eff. Sept. 1, 2003.

Sec. 63.075. DISPOSITION AND USE OF FEES. (a) The service shall deposit fees collected under this subchapter in the same manner as other local institutional funds of The Texas A&M University System. The fees shall be set apart as a special fund to be known as the Texas fertilizer control fund.

(b) The Texas fertilizer control fund shall be used, with the approval and consent of the board, for administering and enforcing this chapter, including paying the cost of:

(1) salaries;

(2) equipment and facilities;

(3) registration;

(4) publication of bulletins and reports; and

(5) inspection, sampling, and analysis.

(c) Any fees collected under this subchapter that, in the judgment of the board, are not needed for the proper and efficient enforcement and administration of this chapter may, with approval of the board, be used for research relative to the value of commercial fertilizers.

Acts 1981, 67th Leg., p. 1146, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1850, ch. 349, art. 1, Sec. 5, eff. Sept. 1, 1983.

SUBCHAPTER F. INSPECTION, SAMPLING, AND ANALYSIS

Sec. 63.091. INSPECTION AND SAMPLING; ENTRY POWER. In order to determine if commercial fertilizer is in compliance with this chapter, the service is entitled to:

(1) enter during regular business hours and inspect any place of business, mill, plant, building, or vehicle, and to open any bin, vat, or parcel, that is used in the manufacture, transportation, importation, sale, or storage of a commercial fertilizer or is suspected of containing a commercial fertilizer; and

(2) take samples from fertilizer found during that inspection.

Acts 1981, 67th Leg., p. 1146, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1851, ch. 349, art. 1, Sec. 6, eff. Sept. 1, 1983.

Sec. 63.092. PROCEDURE FOR SAMPLING AND ANALYSIS. The service by rule shall prescribe the procedures for sampling and analysis of commercial fertilizers. The procedures must, to the extent practicable, be in accordance with the official methods of the Association of Official Analytical Chemists or other methods that the service considers authentic by research and investigation.

Acts 1981, 67th Leg., p. 1146, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1851, ch. 349, art. 1, Sec. 6, eff. Sept. 1, 1983.

Sec. 63.093. IDENTIFICATION OF SAMPLE. (a) Each sample taken shall be sealed with a label placed on the container of the sample showing:

(1) the serial number of the sample;

(2) the date on which the sample was taken; and

(3) the signature of the person who took the sample.

(b) Each sample shall be sent to the service. In addition, a report shall be sent to the service stating:

(1) the name or brand of commercial fertilizer sampled;

(2) the serial number of the sample;

(3) the manufacturer or guarantor of the sample, if known;

(4) the name of the person in possession of the lot

samples;

(5) the date and place of taking the sample; and

(6) the name of the person who took the sample.

(c) For the purpose of properly identifying a sample with the lot sampled, the service is entitled to examine and copy any invoice, transportation record, or other record pertaining to the lot.

Acts 1981, 67th Leg., p. 1146, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1851, ch. 349, art. 1, Sec. 7, eff. Sept. 1, 1983.

Sec. 63.094. INDEPENDENT ANALYSIS OF SAMPLE. (a) If the service finds through chemical analysis or other method that a commercial fertilizer is in violation of a provision of this chapter, the service shall notify the manufacturer or other person who caused the fertilizer to be distributed. The notice must be in writing and give full details of the findings of the service.

(b) After receiving a notice under Subsection (a) of this section, the manufacturer or other person who caused the fertilizer to be distributed may request that the service submit portions of the sample analyzed to other chemists for independent analysis. After receiving a request, the service shall submit two portions of the sample analyzed to two qualified chemists selected by the service. If requested, the service shall also submit one portion of the sample to the person requesting independent analysis. A request under this subsection must be filed with the service before the 16th day following the day on which notice is given.

(c) Each of the chemists selected by the service under Subsection (b) of this section shall analyze the portion of the sample and certify findings to the service under oath. The findings shall be prepared in duplicate and the service shall forward one copy of each chemist's findings to the person who requested independent analysis.

(d) The three chemical analyses obtained under this section may be considered in determining whether a violation of this chapter has occurred.

(e) Except as provided by this subsection, the person requesting independent analysis under this section shall pay the costs of the analysis. If as a result of the independent analysis

the service determines that a violation has not occurred, the service shall pay the costs of the analysis.

Acts 1981, 67th Leg., p. 1147, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1852, ch. 349, art. 1, Sec. 8, eff. Sept. 1, 1983.

Sec. 63.095. TESTING OF SAMPLES ON REQUEST. In accordance with the rules of the director, any person may submit a sample of a commercial fertilizer to the director for analysis. The results of the analysis shall be for informational purposes only, may not identify the manufacturer, and may not be published.

Acts 1981, 67th Leg., p. 1147, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. ENFORCEMENT; REMEDIES

Sec. 63.121. STOP-SALE ORDER. (a) If the service has reasonable cause to believe that a commercial fertilizer is being distributed in violation of a provision of this chapter, the service shall affix to the container of the fertilizer a written notice containing:

(1) an order to stop the sale of the fertilizer; and

(2) a warning to all persons not to dispose of the fertilizer in any manner until the service or a court gives permission or until the stop-sale order expires.

(b) If the service finds that a commercial fertilizer is in compliance with this chapter, the service shall immediately remove the stop-sale order.

(c) A stop-sale order expires at the end of the 30th day following the day on which it was affixed unless, prior to that time, the service has instituted proceedings under Section 63.122 of this code to condemn the fertilizer.

Acts 1981, 67th Leg., p. 1147, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983; Acts 2003, 78th Leg., ch. 682, Sec. 4, eff. Sept. 1, 2003.

Sec. 63.122. CONDEMNATION OF FERTILIZER. (a) If, after examination and analysis, the service finds that a commercial fertilizer is in violation of a provision of this chapter, the service shall petition the district or county court in whose jurisdiction the fertilizer is located for an order for the condemnation and confiscation of the fertilizer. If the court determines that the fertilizer is in violation of this chapter, the fertilizer shall be disposed of by sale or destruction in accordance with the order of the court.

(b) If a condemned commercial fertilizer is sold under Subsection (a) of this section, the proceeds of the sale, less court costs and charges, shall be paid into the state treasury.

(c) If the court finds that a violation of this chapter may be corrected by proper processing or labeling, the court may order that the fertilizer be delivered to the registrant for processing or labeling under the supervision of the service. Before entering that order, the court shall:

(1) enter the decree;

(2) require that all costs, fees, and expenses be paid; and

(3) require the registrant to post good and sufficient bond conditioned on the proper labeling and processing of the fertilizer.

(d) The registrant of the fertilizer shall pay all costs incurred by the service in the supervision of labeling or processing under Subsection (c) of this section. The court shall return the bond to the registrant when the service notifies the court that the commercial fertilizer is no longer in violation of this chapter and that the registrant has paid the expenses of supervision.

Acts 1981, 67th Leg., p. 1148, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983.

Sec. 63.123. WARNINGS. If the service determines that a violation of this chapter is of a minor nature and that the public interest will be served and protected by the issuance of a written warning, the service may issue the warning instead of proceeding to condemn the fertilizer, report the violation for prosecution, or take other administrative action.

Acts 1981, 67th Leg., p. 1148, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983.

Sec. 63.124. INJUNCTION. (a) The service may sue in the name of the director to enjoin a violation of this chapter.

(b) The service may request a prosecuting attorney or the attorney general to sue to enjoin a violation or threatened violation of this chapter.

Amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983.

Sec. 63.125. SUIT TO RECOVER FEES. The service may sue to recover an inspection fee or penalty due under Subchapter E of this chapter. Venue for a suit under this section is in Brazos County.

Acts 1981, 67th Leg., p. 1148, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 63.124 and amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983.

Sec. 63.126. PROSECUTIONS. Each district attorney, criminal district attorney, or county attorney to whom the service reports a violation of this chapter shall cause appropriate proceedings to be instituted and prosecuted in the proper court without delay in the manner provided by law.

Acts 1981, 67th Leg., p. 1148, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 63.125 and amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983.

Sec. 63.127. VENUE FOR CIVIL AND CRIMINAL ACTIONS. Except as provided by Section 63.125 of this chapter, venue for a civil action or criminal prosecution under this chapter is in the county in which the commercial fertilizer is located at the time the alleged violation is discovered by or made known to the service.

Added by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983.

Sec. 63.128. APPEAL OF ADMINISTRATIVE ORDER OR RULING. (a) A person at interest who is aggrieved by an order or ruling of the service may appeal the order or ruling in the manner provided for contested cases under Chapter 2001, Government Code.

(b) Appeal under this section is by trial de novo.

Acts 1981, 67th Leg., p. 1148, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 63.126 and amended by Acts 1983, 68th Leg., p. 1853, ch. 349, art. 1, Sec. 9, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER H. PENALTIES

Sec. 63.141. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously committed an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1149, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1856, ch. 349, art. 1, Sec. 10, eff. Sept. 1, 1983.

Sec. 63.142. DISTRIBUTION OF MISBRANDED FERTILIZER. (a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial fertilizer that:

(1) carries a false or misleading statement on, attached to, or accompanying the container;

(2) makes a false or misleading statement concerning its agricultural value on the container or in any advertising matter accompanying or associated with it;

(3) is of a composition, quantity, or quality that is below or is different from that which it is represented to be on its label;

(4) has a container that is made, formed, or filled in a

manner that is misleading; or

(5) purports to be or is represented as a commercial fertilizer for which a definition of identity and a standard have been prescribed by rule, but does not conform to the definition or standard.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has been previously convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1149, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1856, ch. 349, art. 1, Sec. 10, eff. Sept. 1, 1983.

Sec. 63.143. DISTRIBUTION OF ADULTERATED FERTILIZER. (a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute a commercial fertilizer that:

(1) has been damaged in a manner that reduces its value;

(2) has damage or an inferiority that has been concealed;

(3) has added to it a substance that increases its bulk or weight, reduces its quality or strength, or makes it appear better or of greater value than it is;

(4) has had an ingredient omitted or extracted, in whole or in part; or

(5) contains or bears a poisonous or deleterious substance that may render it injurious to plants under ordinary conditions of use.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1149, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1856, ch. 349, art. 1, Sec. 10, eff. Sept. 1, 1983.

Sec. 63.144. DISTRIBUTION OF COMMERCIAL FERTILIZER WITHOUT REGISTRATION, LABELING, OR PAYMENT OF INSPECTION FEE. (a) A person

commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial fertilizer:

(1) that is required to be registered but is not registered in accordance with Subchapter C of this chapter;

(2) that is not labeled in accordance with Subchapter D of this chapter; or

(3) for which an inspection fee has not been paid in accordance with Subchapter E of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Added by Acts 1983, 68th Leg., p. 1856, art. 1, ch. 349, Sec. 10, eff. Sept. 1, 1983.

Sec. 63.145. REFUSAL OF INSPECTION OR SAMPLING. (a) A person commits an offense if the person refuses, conspires to refuse, or causes another person to refuse to permit entry, inspection, sampling, or the examination and copying of invoices or transportation records under Subchapter F of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Added by Acts 1983, 68th Leg., p. 1856, ch. 349, art. 1, Sec. 10, eff. Sept. 1, 1983.

Sec. 63.146. REFUSAL TO PAY INSPECTION FEE OR SUBMIT RECORDS. (a) A person commits an offense if the person refuses, conspires to refuse, or causes another person to refuse to make records available, furnish reports, permit the examination of records, or pay an inspection fee in accordance with Subchapter E of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Added by Acts 1983, 68th Leg., p. 1856, ch. 349, art. 1, Sec. 10, eff. Sept. 1, 1983.

SUBCHAPTER I. AMMONIUM NITRATE

Sec. 63.151. DEFINITIONS. In this subchapter:

(1) "Ammonium nitrate" means ammonium salt of nitric acid that contains more than 33 percent nitrogen, one-half of which is the 50 ammonium form and one-half of which is the nitrate form.

(2) "Ammonium nitrate material" means solid fertilizer that includes ammonium nitrate as a component, if the fertilizer's nitrogen content derived from the ammonium nitrate is at least 28 percent of the fertilizer by weight.

(3) "Ammonium nitrate storage facility" means a facility that stores ammonium nitrate material or ammonium nitrate to be used in ammonium nitrate material and includes the premises on which a facility is located.

(4) "Fire marshal" means the state fire marshal or a local fire marshal, fire chief, or volunteer fire chief having jurisdiction over the area in which an ammonium nitrate storage facility is located.

(5) "Operator" means the person who controls the day-to-day operations of an ammonium nitrate storage facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 1, eff. June 16, 2015.

Sec. 63.152. REGISTRATION REQUIRED. (a) A person may not produce, store, transfer, offer for sale, or sell ammonium nitrate or ammonium nitrate material unless the person holds a certificate of registration issued by the service under this subchapter.

(b) An application for a registration submitted by an applicant who owns an ammonium nitrate facility must be:

(1) submitted on a form prescribed by the service that includes:

(A) the name, address, and telephone number of each

ammonium nitrate facility owned by the applicant; and

(B) the name of the person designated by the applicant as the point of contact for each facility owned by the applicant; and

(2) accompanied by a fee in an amount sufficient to cover the service's costs to administer this subchapter.

(c) A person who engages in the sale of ammonium nitrate or ammonium nitrate material must display the person's registration in conspicuous public view in the person's place of business.

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 120 (H.B. 2527), Sec. 2, eff. September 1, 2009.

Sec. 63.153. SECURITY REQUIREMENTS. A person who engages in the sale of ammonium nitrate or ammonium nitrate material shall take steps to secure the ammonium nitrate or ammonium nitrate material stored at the person's facility against vandalism, theft, or other unauthorized access, including:

(1) ensuring that a storage facility is fenced or otherwise enclosed and locked when unattended;

(2) inspecting a storage facility daily for signs of vandalism and to verify its structural integrity; and

(3) establishing and maintaining ongoing inventory control procedures for the ammonium nitrate or ammonium nitrate material.

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.

Sec. 63.154. SALE OF AMMONIUM NITRATE. (a) Before completing a sale of ammonium nitrate or ammonium nitrate material, a person that engages in those sales shall:

(1) require the person making the purchase to:

(A) display a driver's license or other form of identification containing the person's photograph;

(B) provide the other personal information required by Subdivision (2); and

(C) sign for the purchase; and

(2) make a record of the sale, including:

(A) the name of the person making the purchase;

(B) the date of the purchase;

(C) the purchaser's address, date of birth, and phone number;

(D) the form of identification the purchaser presented;

(E) whether the purchase is being made on behalf of another person; and

(F) the amount and brand name of the ammonium nitrate or ammonium nitrate material purchased.

(b) The service shall:

(1) adopt rules allowing a person to refuse to sell ammonium nitrate or ammonium nitrate material based on the season or the location of the sale; and

(2) distribute forms to each person registered under this subchapter to be used to record the information required under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.

Sec. 63.155. MAINTENANCE OF RECORDS. A person who offers to sell or sells ammonium nitrate or ammonium nitrate material shall maintain each record made under Section 63.154 until at least the second anniversary of the date the record is made and shall make each record only available on request by:

(1) the Office of the Texas State Chemist;

(2) the Department of Public Safety; or

(3) a law enforcement agency of the United States.

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.

Sec. 63.156. SUSPENSION OF REGISTRATION. If the service finds that a person registered under this subchapter offered to sell or sold ammonium nitrate or ammonium nitrate material in violation of this subchapter or a rule adopted under this subchapter, the service may:

(1) suspend a person's registration for a period of 90 days

for a first violation; and

(2) suspend a person's registration for a period of at least 90 days or revoke the person's registration for a second or subsequent violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.

Sec. 63.157. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) tampers with ammonium nitrate or ammonium nitrate material stored on the property of another; or

(2) presents false identification to purchase ammonium nitrate or ammonium nitrate material.

(b) A person commits an offense if the person purchases ammonium nitrate or ammonium nitrate material with the intent to manufacture an explosive device.

(c) A person commits an offense if the person offers to sell or sells ammonium nitrate or ammonium nitrate material and does not hold a registration issued under this subchapter.

(d) An offense under Subsection (a) or (c) is a Class A misdemeanor.

(e) An offense under Subsection (b) is a felony of the third degree.

(f) It is an exception to the application of Subsection (b) that the person holds a permit or license issued under 18 U.S.C. Section 843.

(g) If conduct constituting an offense under this section is also an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. September 1, 2007.

Sec. 63.158. FIRE PREVENTION AT AMMONIUM NITRATE STORAGE FACILITIES. (a) The owner or operator of an ammonium nitrate storage facility shall, on request, at a reasonable time:

(1) allow a fire marshal to enter the facility to make a thorough examination of the facility; and

(2) allow the local fire department access to the facility to perform a pre-fire planning assessment.

(b) A fire marshal who determines the presence of one or more of the following hazardous conditions that endangers the safety of a structure or its occupants by promoting or causing fire or combustion shall notify the owner or operator of the facility of the need to correct the condition. The hazardous conditions are:

(1) the presence of a flammable substance;

(2) a dangerous or dilapidated wall, ceiling, or other structural element;

(3) improper electrical components, heating, or other building services or facilities;

(4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring;

(5) the dangerous storage of substances other than ammonium nitrate or ammonium nitrate material, including storage or use of hazardous substances; or

(6) inappropriate means of egress, fire protection, or other fire-related safeguard.

(c) The owner or operator of an ammonium nitrate storage facility shall:

(1) on request by a fire marshal or the service provide evidence of compliance with:

(A) Chapter 505 or 507, Health and Safety Code, as applicable; and

(B) United States Department of Homeland Security registration requirements;

(2) post National Fire Protection Association 704 warning placards on the outside of the storage area;

(3) store ammonium nitrate or ammonium nitrate material:

(A) in a fertilizer storage compartment or bin constructed of wood, metal, or concrete that is protected against impregnation by the ammonium nitrate or ammonium nitrate material; and

(B) separately from any non-fertilizer materials; and

(4) separate ammonium nitrate or ammonium nitrate material from combustible or flammable material by 30 feet or more.

(d) A fire marshal who identifies the existence of a hazardous condition under Subsection (b) or a violation of Subsection (a) or (c) shall notify the service of the condition or violation.

(e) If notified by a fire marshal of a hazardous condition under Subsection (b), the service may direct the owner or operator of the facility to correct the condition.

(f) If notified by the fire marshal of a violation of Subsection (a) or (c), the service shall:

(1) direct the owner or operator of the facility to correct the violation as provided by Subsection (g); or

(2) take appropriate enforcement action as authorized by this chapter.

(g) If directed by the service to correct a hazardous condition or a violation, an owner or operator shall remedy the condition or violation before the expiration of a period specified by the service, which may not exceed 10 days. If the service determines that the condition or violation has not been remedied before the expiration of the specified period, the service shall take appropriate enforcement action as authorized by this chapter.

(h) Section 419.909(b), Government Code, does not apply to an examination of an ammonium nitrate storage facility by a fire marshal under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 2, eff. June 16, 2015.

CHAPTER 64. ARBITRATION OF SEED PERFORMANCE DISPUTES

Sec. 64.001. APPLICABILITY. This chapter applies only to claims or counterclaims due to the failure of seed purchased in a seed bag or package that contains or has attached the notice required by Section 64.003 of this code.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990. Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 1, eff. Sept. 1, 1993.

Sec. 64.002. REQUIREMENT OF ARBITRATION. (a) When a purchaser of seed designed for planting claims to have been damaged by the failure of the seed to produce or perform as represented by warranty or by the label required to be attached to the seed under this subtitle or as a result of negligence, the purchaser must submit the claim to arbitration as provided by this chapter not later than the 10th day after the date on which the purchaser discovered or

reasonably should have discovered the defect as a prerequisite to the exercise of the purchaser's right to maintain a legal action against the labeler or any other seller of the seed.

(b) Any period of limitations that applies to the claim shall be tolled until the 11th day after the date of filing with the commissioner of the report of arbitration by the board of arbitration.

(c) A claim of damages due to the failure of the seed as described by Subsection (a) of this section may not be asserted as a counterclaim or defense in any action brought by a seller against a purchaser until the purchaser has submitted a claim to arbitration.

(d) When the court in which an action has been filed by a seller of seed described by Subsection (c) of this section receives from the purchaser a copy of the purchaser's complaint filed in arbitration, accompanied by a written notice of intention to use the claim as a counterclaim or defense in the action, the seller's action shall be stayed. Any period of limitations that applies to the claim is suspended until the 11th day after the date of filing with the commissioner of the report of arbitration by the board of arbitration.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.
Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 543, Sec. 1, eff. Sept. 1, 2003.

Sec. 64.003. NOTICE OF ARBITRATION REQUIREMENT. (a) Conspicuous language calling attention to the requirement for arbitration under this chapter shall be included on the analysis label required under this subtitle or otherwise attached to the seed bag or package.

(b) The required notice shall read substantially as follows:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of Texas, arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed. Information about this requirement may be obtained from the state commissioner of agriculture.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.
Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 3, eff. Sept. 1, 1993.

Sec. 64.004. EFFECT OF ARBITRATION. In any litigation involving a complaint that has been the subject of arbitration under this chapter, any party may introduce the report of arbitration as evidence of the facts found in the report, and the court may give such weight to the arbitration board's findings of fact, conclusions of law, and recommendations as to damages and costs as the court determines advisable. The court may also take into account any findings of the board of arbitration with respect to the failure of any party to cooperate in the arbitration proceedings, including the arbitration board's ability to determine the facts of the case.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.
Amended by Acts 2003, 78th Leg., ch. 543, Sec. 2, eff. Sept. 1, 2003.

Sec. 64.005. ARBITRATION BOARD. (a) The State Seed and Plant Board, as constituted under Section 62.002 of this code, is the board of arbitration for complaints filed under this chapter.

(b) As a board of arbitration, the State Seed and Plant Board shall conduct arbitration as provided by this chapter. The arbitration board may be called into session by the commissioner or the chairman of the State Seed and Plant Board to consider matters referred to the arbitration board by the commissioner or the chairman.

(c) The State Seed and Plant Board shall also be given the authority to hire an outside arbitrator who is not an employee of the Department of Agriculture or a member of the arbitration board.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

Sec. 64.006. ARBITRATION PROCEDURES. (a) A purchaser may begin arbitration by filing with the commissioner a sworn complaint and a filing fee, as provided by department rule. The purchaser shall send a copy of the complaint to the seller by certified mail.

(b) Not later than the 15th day after the date the seller receives a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and send a copy of the answer to the purchaser by certified mail.

(c) The commissioner shall refer the complaint and the answer to the arbitration board for investigation, findings, and recommendations.

(d) On referral of the complaint for investigation, the arbitration board shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner not later than the 60th day after the date of the referral, or before a later date determined by the parties.

(e) The report of the arbitration board shall include findings of fact, conclusions of law, and recommendations as to costs, if any. If there is a cost, the commissioner shall assess the cost of arbitration against any party found responsible.

(f) In the course of its investigation, the arbitration board or any of its members may:

(1) examine the purchaser and the seller on all matters that the arbitration board considers relevant;

(2) grow to production a representative sample of the seed through the facilities of the commissioner or a designated university under the commissioner's supervision; or

(3) hold informal hearings at the time and place the chairman of the State Seed and Plant Board directs, with reasonable notice to all parties.

(g) The arbitration board may delegate all or any part of any investigation to one or more of its members. Any delegated investigation shall be summarized in writing and considered by the arbitration board in its report.

(h) The arbitration board shall consider any field inspection or other data submitted by either party in its report and recommendation.

(i) The members of the arbitration board serve without compensation but are entitled to reimbursement for expenses incurred in the performance of their duties in the amounts provided by the General Appropriations Act.

(j) After the arbitration board has filed a report of arbitration, the commissioner shall promptly transmit the report by certified mail to all parties.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990. Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 2.25, eff. Sept. 1, 1995; Acts

2003, 78th Leg., ch. 543, Sec. 3, eff. Sept. 1, 2003.

Sec. 64.0065. EFFECT OF NONCOMPLIANCE. The arbitration board may dismiss a purchaser's claim to arbitration if the purchaser fails to submit the claim within the period prescribed by Section 64.002(a).

Added by Acts 2003, 78th Leg., ch. 543, Sec. 4, eff. Sept. 1, 2003.

Sec. 64.007. DEPARTMENT RULES. The department may adopt rules necessary to carry out the purposes of this chapter.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS
CHAPTER 71. GENERAL CONTROL
SUBCHAPTER A. INSPECTIONS; QUARANTINES; CONTROL AND ERADICATION ZONES

Sec. 71.001. QUARANTINES AGAINST OUT-OF-STATE DISEASES AND PESTS. If the department determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area outside the state, the department shall establish a quarantine against the infested area at the boundaries of the state or in other areas within the state.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.002. QUARANTINES AGAINST IN-STATE DISEASES AND PESTS. If the department determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state, the department shall quarantine the infested area.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.003. QUARANTINES AROUND PEST-FREE AREAS. (a) If the department determines that an insect pest or plant disease of general

distribution in this state does not exist in an area, the department may declare the area pest-free and quarantine surrounding areas.

(b) Venue for a case arising under this section is in a county contained in the pest-free area.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.004. EMERGENCY QUARANTINES. (a) The department may establish an emergency quarantine without notice and public hearing if the department determines that a public emergency exists in which there is the likelihood of introduction or dissemination of an insect pest or plant disease that is dangerous to the interests of horticulture and agriculture in this state.

(b) The department may establish the emergency quarantine at the boundaries of the state or in other areas within the state.

(c) The emergency quarantine and rules adopted in order to prevent the introduction or spread of the pest or disease are effective immediately on establishment or adoption.

(d) An emergency quarantine shall be established in accordance with the provisions related to emergency rulemaking in Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.15, eff. September 1, 2009.

Sec. 71.005. MOVEMENT OF PLANTS FROM QUARANTINED AREA. (a) Except as provided by Subsection (b) of this section, the department shall prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine or is not found in the pest-free area.

(b) A plant, plant product, or substance prohibited from movement by a quarantine established under Section 71.001, 71.002, or 71.004 of this code may be moved into an unquarantined area if moved under safeguards considered by the department to be adequate to prevent the introduction or spread of the pest or disease into the state or an unquarantined area.

(c) The department may charge a fee, as provided by department rule, for an inspection required for the movement of plants into or out of a quarantined area.

Acts 1981, 67th Leg., p. 1152, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.07, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.26, eff. Sept. 1, 1995.

Sec. 71.006. HEARING. (a) Before quarantining an area under Section 71.001, 71.002, or 71.003 of this code, the chief entomologist of the department and, if appointed, one or more other persons appointed by the commissioner, shall hold a public hearing in a convenient and accessible place in order to investigate the pest or disease and determine if the pest or disease is a menace to a valuable plant or plant product. The persons conducting the hearing shall take the constitutional oath of office and may administer oaths to take testimony.

(b) The persons conducting the hearing shall record the proceedings and make a written report to the department with findings, and reasons supporting the findings as to:

(1) whether the pest or disease is a menace to an agricultural or horticultural crop;

(2) whether a quarantine is necessary or desirable; and

(3) if a quarantine is necessary or desirable, the best known means of controlling or exterminating the pest or disease.

(c) Following receipt of the report under Subsection (b) of this section, the department may establish the quarantine and adopt rules as necessary to the protection of the agricultural or horticultural interests of this state.

Acts 1981, 67th Leg., p. 1152, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.007. RULES. (a) In addition to other rules necessary for the protection of agricultural and horticultural interests, the department may adopt rules that:

(1) prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area;

(2) provide for the destruction of trees or fruits;

(3) provide for the cleaning or treatment of orchards;

(4) provide for methods of storage;

(5) prevent entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone;

(6) provide for the maintenance of a host-free period in which certain fruits are not allowed to ripen;

(7) provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; or

(8) provide for a program to manage or eradicate exotic citrus diseases, including citrus canker and citrus greening.

(b) Rules adopted under Subsection (a)(8) shall establish, based on scientific evidence, when a healthy but suspect citrus plant must be destroyed, and may provide for compensation to an owner of a plant destroyed under this subsection.

Acts 1981, 67th Leg., p. 1152, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1981, 67th Leg., 1st C.S., p. 242, ch. 22, art. II, Sec. 2, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1050 (H.B. 4577), Sec. 1, eff. September 1, 2009.

Sec. 71.008. CONTROL OR ERADICATION ZONE. (a) On request of the commissioners court of any county, the department shall investigate whether a certain insect pest or plant disease exists in the county. Based on that investigation, the department shall make a written report to the commissioners court stating:

(1) the nature of the infestation, if any;

(2) the best known method of controlling or eradicating the pest or disease;

(3) the treatment or method necessary to be applied in each case; and

(4) a detailed description of the method of making, procuring, and applying the recommended preparation or treatment and the time and duration of the treatment.

(b) After receiving the report of the department, the commissioners court may conduct a public hearing on the report. The

commissioners court may publish the text of the report and notice of the hearing for two consecutive weeks in a newspaper of general circulation in each area under consideration. The commissioners court shall hold the hearing not less than 15 days after the first day of published notice. Any interested person is entitled to be heard at the hearing.

(c) After the hearing, the commissioners court shall make a written report of its conclusions to the department. If the commissioners court approves the recommendations of the department and determines that the recommended measures should be applied in the area under consideration, the commissioners court by order entered in its minutes shall request that the department establish a control zone or an eradication zone in each applicable area.

(d) If requested to establish a control or eradication zone under Subsection (c) of this section, the department shall issue a proclamation designating the appropriate area a control zone or an eradication zone, as applicable, and shall adopt rules governing the control or eradication of the pest or disease within the zone. No person may commit an act prohibited by the rules or refuse to perform an act as required by the rules.

(e) A commissioners court may appropriate funds from the general revenue of the county and employ aid as necessary to carry out this section.

(f) This section does not restrict the department's authority to establish on its own initiative an eradication program within a quarantined area to protect the state's agricultural resources.

Acts 1981, 67th Leg., p. 1153, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78th Leg., ch. 369, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1107, Sec. 2, eff. June 20, 2003.

Sec. 71.0081. VEHICLE INSPECTIONS FOR INSECT PESTS OR PLANT DISEASES. (a) If the department establishes a quarantine or, without establishing a quarantine, determines that there is a likelihood of introduction or dissemination of an insect pest or plant disease that is dangerous to the interests of horticulture or agriculture in this state, the department may stop and inspect vehicles entering this state or moving within this state to determine if the vehicle contains a plant, plant product, or other substance

capable of introducing or disseminating the pest or disease.

(b) The department may conduct inspections under this section on a continual or periodic basis, as the commissioner determines is necessary or effective.

(c) The department may establish checkpoints to carry out the purposes of this subchapter at entry points to the state or along any public road in the state and construct permanent road stations at the checkpoints in cooperation with other state agencies.

(c-1) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

(d) The department may adopt rules necessary to the conduct of inspections under this section.

Added by Acts 1981, 67th Leg., 1st C.S., p. 242, ch. 22, art. II, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1236, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 2, eff. June 18, 2005.

Sec. 71.0082. INSPECTIONS FOR CERTAIN PESTS AND DISEASES. (a) In addition to vehicle inspections authorized under Section 71.0081, the department and the Texas Animal Health Commission, under the direction of the department, shall jointly conduct road station and interstate shipment inspections as feasible at strategic points throughout this state and as determined to be appropriate by the department and the Texas Animal Health Commission, taking into consideration the significance of plant and animal inspections in proactively protecting this state's borders.

(b) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 3, eff. June 18, 2005.

Sec. 71.0083. AGRICULTURE WARRANTS. (a) In addition to vehicle inspections authorized under Section 71.0081, the department may seek an agriculture warrant with respect to a plant pest or plant disease identified in the application for the warrant to:

(1) conduct an inspection of:

(A) physical areas;

(B) containers;

(C) buildings; or

(D) items that are reasonably likely to contain:

(i) a plant pest;

(ii) a plant disease; or

(iii) an infected or potentially infected plant;

(2) set a trap for certain plant pests;

(3) examine records pertaining to the detection, treatment, purchase, or sale of plants; or

(4) test, treat, identify, quarantine, take samples of, seize, or destroy infected or potentially infected plants.

(b) An agriculture warrant may be issued only by a magistrate authorized to issue a search warrant under Chapter 18, Code of Criminal Procedure, only after the department has exercised reasonable efforts to obtain consent to conduct a search, and on application by the department accompanied by a supporting affidavit that establishes probable cause for the issuance of the warrant. The warrant must describe:

(1) the street address and municipality or the parcel number and county of each place or premises subject to the warrant; and

(2) each type of plant pest or disease that is the subject of the warrant.

(c) In determining the existence of probable cause for the issuance of an agriculture warrant, it shall be sufficient to show only that:

(1) the place or premises described in the application for the warrant are located in an area subject to a quarantine established by the department with respect to the plant pest or disease that is the subject of the warrant; or

(2) there is a reasonable probability the place or premises contain a plant pest or disease or are located in an area that is reasonably suspected of being infected with a plant pest or disease because of its proximity to a known infestation.

(d) A single application and affidavit is sufficient for the issuance of multiple agriculture warrants if the application for the warrant describes the location of each place or premises subject to the warrant and all those places or premises are located in the same county.

(e) The department is entitled to an ex parte hearing on an application for an agriculture warrant. The warrant may be served and executed by a department employee and shall authorize department employees to undertake any action authorized by the warrant. On request by the department, a sheriff or constable shall accompany and assist the department employee in serving or executing the warrant.

(f) At the time the warrant is executed, a copy of the warrant shall be:

(1) delivered to a person 18 years of age or older who is occupying or living in the place or premises subject to the warrant; or

(2) attached to the place or premises in a conspicuous location.

(g) An agriculture warrant is valid until the 61st day after the date the warrant is issued and authorizes multiple executions of the warrant before the date the warrant expires. A warrant may be renewed or extended by the magistrate who issued the original warrant if the magistrate determines there is probable cause for the warrant to be reissued or extended. The agriculture warrant must be returned to the issuing magistrate before the warrant expires.

(h) An agriculture warrant may not:

(1) be executed between 7 p.m. and 7 a.m. of the following day or on a state holiday;

(2) authorize the entry into or inspection of the interior of any occupied residential dwelling; or

(3) be issued in blank.

(i) A person commits an offense if the person intentionally interferes with the execution of an agriculture warrant. An offense under this subsection is a Class B misdemeanor.

(j) This section does not restrict the authority of this state or a political subdivision of this state to otherwise conduct an inspection with or without a warrant as authorized by other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 411 (H.B. 1949), Sec. 1, eff. September 1, 2009.

Sec. 71.009. SEIZURE, TREATMENT, AND DESTRUCTION OF PLANTS, PLANT PRODUCTS, AND OTHER SUBSTANCES. (a) The department shall seize any plant, plant product, or substance that it determines:

(1) is transported or carried from a quarantined area in violation of a quarantine order; or

(2) is moved into or within this state and is infested with an insect pest or infected with a disease dangerous to any agricultural or horticultural product, whether or not the plant, product, or substance comes from an area known to be infested.

(b) If a plant, plant product, or substance is seized under Subsection (a)(1) of this section, the department shall immediately notify the owner that the plant, product, or substance is a public menace and that it must be destroyed, treated, or, if feasible, returned to the point of origin. If a plant, product, or substance is seized under Subsection (a)(2) of this section, the department shall immediately notify the owner that the plant, product, or substance is a public menace and that it must be destroyed or treated.

(c) If the owner of a plant, plant product, or substance seized under Subsection (a) of this section is unknown to the department, the department shall publish notice that, after a date not less than 10 days after the first day of publication, the department will destroy the plant, product, or substance. The department shall publish the notice for two consecutive weeks in a newspaper of general circulation in the county where the plant, product, or substance is found. The notice must describe the article seized. If the owner claims the article before the date for destruction set by the notice, the department shall deliver the article to the owner at the owner's expense. If the owner does not claim the article within the allotted time, the department may destroy the article or have it destroyed.

(d) If the owner of a fruit tree or fruit condemned by the department under this subchapter fails or refuses to destroy the tree or fruit immediately after being instructed to do so by the department, the department shall abate the nuisance and immediately destroy the tree or fruit or otherwise render the tree or fruit not a nuisance. In enforcing this subsection, the department shall call on the sheriff of the county in which the tree or fruit is located, and

the sheriff shall cooperate with the department and render all assistance considered necessary by the person seeking to destroy the tree or fruit.

(e) The owner of a plant, plant product, or substance treated or destroyed by the department under this section is liable to the department for the costs of treatment or destruction, and the department may sue to collect those costs.

(f) This section does not apply to a citrus plant, citrus plant product, or other citrus substance.

Acts 1981, 67th Leg., p. 1153, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 242, ch. 22, art. II, Sec. 3, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 230, Sec. 2, eff. May 20, 1993.

Sec. 71.0091. SEIZURE, TREATMENT, AND DESTRUCTION OF A CITRUS PLANT, CITRUS PLANT PRODUCT, OR CITRUS SUBSTANCE. (a) The department may seize a citrus plant, citrus plant product, or citrus substance that the department determines:

(1) is transported or carried from a quarantined area in violation of a quarantine order;

(2) is infected with a disease or insect pest dangerous to a citrus plant, citrus plant product, or citrus substance, without regard to whether the citrus plant, citrus plant product, or citrus substance comes from an area known to be infested; or

(3) is located within proximity to a plant infected by a disease dangerous to any agricultural or horticultural product and is determined by the department to likely be infected by that disease, regardless of whether the plant currently exhibits symptoms of the disease.

(b) If a citrus plant, citrus plant product, or citrus substance is seized under Subsection (a)(1), the department immediately shall notify the owner that the citrus plant, citrus plant product, or citrus substance is a public nuisance and that it must be destroyed, treated, or, if feasible, returned to its point of origin. If a citrus plant, citrus plant product, or citrus substance is seized under Subsection (a)(2) or (3), the department immediately shall notify the owner that the citrus plant, citrus plant product, or citrus substance is a public nuisance and must be destroyed or

treated.

(c) If the owner of a citrus plant, citrus plant product, or citrus substance seized under Subsection (a)(1) or (2) is unknown to the department, the department shall publish or post notice that, not earlier than the fifth day after the first day on which notice is published or posted, the department may destroy the citrus plant, citrus plant product, or citrus substance. The department shall publish the notice for three consecutive days in a newspaper of general circulation in the county in which the citrus plant, citrus plant product, or citrus substance is located or post the notice in the immediate vicinity of the area in which the citrus plant, citrus plant product, or citrus substance is located. The notice must describe the citrus plant, citrus plant product, or citrus substance seized. If the owner claims the citrus plant, citrus plant product, or citrus substance before the date for destruction set by the notice, the department shall deliver the citrus plant, citrus plant product, or citrus substance to the owner at the owner's expense. If the owner does not claim the citrus plant, citrus plant product, or citrus substance before the date the notice specifies that destruction is permitted, the department may destroy or arrange for the destruction of the citrus plant, citrus plant product, or citrus substance.

(d) If the owner of a citrus plant, citrus plant product, or citrus substance seized by the department under this section fails or refuses to treat or destroy the citrus plant, citrus plant product, or citrus substance immediately after being instructed to do so by the department, the department may abate the nuisance by destroying the citrus plant, citrus plant product, or citrus substance or may otherwise treat the citrus plant, citrus plant product, or citrus substance so that it is no longer a nuisance. In enforcing this subsection, the department may call on the sheriff of the county in which the citrus plant, citrus plant product, or citrus substance is located, and the sheriff shall cooperate with the department and provide assistance necessary to abate the nuisance.

(e) The owner of a citrus plant, citrus plant product, or citrus substance treated or destroyed under Subsection (a)(1) or (2) by the department under this section is liable to the department for the costs of treatment or destruction, and the department may sue to collect those costs.

(e-1) The department may provide for compensation to an owner

of a citrus plant, citrus plant product, or citrus substance destroyed under Subsection (a)(3).

(f) The department may enter into an agreement with a private entity to obtain assistance in defraying the cost of implementing this section.

Added by Acts 1993, 73rd Leg., ch. 230, Sec. 1, eff. May 20, 1993.
Amended by Acts 1997, 75th Leg., ch. 211, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1050 (H.B. 4577), Sec. 2, eff. September 1, 2009.

Sec. 71.0092. SEIZURE, TREATMENT, HANDLING, AND DESTRUCTION OF CERTAIN MATERIALS WITHIN QUARANTINED AREA. (a) In this section, "quarantined article" means:

(1) a plant, plant product, substance, or other item capable of hosting or facilitating the dissemination of an insect pest or plant disease that is the subject of a quarantine established by the department under this subchapter; or

(2) a motor vehicle, railcar, other conveyance, or equipment used for, or intended for use in, the transportation or production of an item described by Subdivision (1).

(b) The department by rule may establish treatment and handling requirements for a quarantined article found within a quarantined area. The requirements must be designed to:

(1) prevent dissemination of a dangerous insect pest or plant disease outside the quarantined area or into a pest-free area in the state;

(2) prevent infestation of a quarantined article by a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter;

(3) decrease the occurrence in this state or a quarantined area of this state of a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter; or

(4) facilitate the eradication of a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter.

(c) A person in possession or control of a quarantined article

located in a quarantined area shall comply with department rules and orders regarding treatment and handling of the quarantined article.

(d) If a person in possession or control of a quarantined article located in a quarantined area fails to comply with a department rule or order under this section, the department may at the expense of the person or of the owner of the article:

(1) seize the quarantined article and, subject to available department resources and Section 71.010:

(A) isolate the article in a manner designed to prevent the dissemination of the dangerous insect pest or plant disease until the article no longer represents a danger of dissemination or until the person agrees to comply with the rule or order;

(B) treat the article to eliminate the danger of dissemination of the dangerous insect pest or plant disease; or

(C) destroy the article; or

(2) seek an injunction from a district court in Travis County ordering the person to:

(A) comply with the department's rule or order; or

(B) surrender possession of the quarantined article to the department for disposition under Subdivision (1).

(e) If the owner of a quarantined article seized under this section is unknown to the department, the department shall publish notice that not earlier than the fifth day after the date on which the notice is published or posted the department may destroy, treat, or isolate the quarantined article at the owner's expense. The department must publish the notice for three consecutive days in a newspaper of general circulation in the county in which the quarantined article was seized. The notice must include a description of the quarantined article. If an owner claims the quarantined article before the date described by the notice and agrees in writing to treat or handle the article in a manner provided by department rule or order, the department shall deliver the quarantined article to the owner at the owner's expense. If an owner does not claim the quarantined article before the date described by the notice, the department may destroy or arrange for the destruction of the quarantined article or continue to isolate or treat the quarantined article at the owner's expense. If an owner refuses to agree in writing to comply with the department's rule or order regarding treatment or handling of a quarantined article, the department may destroy or arrange for the destruction of the

quarantined article or continue to isolate or treat the quarantined article at the owner's expense, subject to Section 71.010.

(f) In enforcing this section, the department may seek the assistance of the Department of Public Safety under Section 71.0101, or any law enforcement officer of the county in which the quarantined article is located. The Department of Public Safety or local law enforcement officer shall cooperate with the department and provide any assistance necessary to implement this section.

(g) The owner of a quarantined article treated, isolated, or destroyed by the department under this section is liable to the department for the costs of treatment, isolation, and destruction, and the department may bring suit to collect the costs.

(h) The attorney general is entitled to court costs and reasonable attorney's fees in any suit brought on behalf of the department under this section, including any suit for an injunction.

(i) The department may enter into an agreement with a public or private entity to obtain assistance in defraying the cost of implementing this section.

Added by Acts 2003, 78th Leg., ch. 369, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1107, Sec. 3, eff. June 20, 2003.

Sec. 71.010. APPEALS. (a) A person who is aggrieved and will be injured by a quarantine or whose property is to be destroyed by order of the department is entitled to appeal to the district court of any county in which the quarantine or order is established or issued. In order to appeal, the person must give written notice of appeal to the department not later than the 10th day following the date of the order or proclamation. The notice must name the district court in which the application is filed.

(b) Immediately after receipt of a notice of appeal, the department shall make a certified copy of the order or proclamation and transmit it to the district court named in the notice.

(c) On receipt of the application for appeal and copy of the order or proclamation, the clerk of the court shall docket the cause on the civil docket in the style: "_____, Commissioner of Agriculture vs. _____, defendant." The suit shall be tried in the manner provided for the trial of civil cases. The judgment of the court on final hearing shall be "that the orders and

proclamations of the commissioner be approved and enforced" or "that said orders and proclamations be and are vacated and held for naught," as the court may determine.

Acts 1981, 67th Leg., p. 1154, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 211, Sec. 5, eff. Sept. 1, 1997.

Sec. 71.0101. DEPARTMENT OF PUBLIC SAFETY TO COOPERATE. The Department of Public Safety shall cooperate with the department in conducting inspections and enforcing the provisions of this subchapter.

Added by Acts 1981, 67th Leg., 1st C.S., p. 243, ch. 22, art. II, Sec. 5, eff. Sept. 1, 1981.

Sec. 71.011. PROTECTION OF CARRIER FROM DAMAGES. A carrier, including a railway, steamship, motorboat, bus, or truck, is not liable to a consignor or consignee for damages for refusing to receive and transport, or refusing to deliver across or into an area protected by a quarantine, any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of an order or rule of the department under this subchapter.

Acts 1981, 67th Leg., p. 1154, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 243, ch. 22, art. II, Sec. 4, eff. Sept. 1, 1981.

Sec. 71.012. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be

deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Acts 1981, 67th Leg., p. 1155, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 244, ch. 22, art. II, Sec. 6, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 44, eff. Sept. 1, 1989.

Sec. 71.013. CRIMINAL PENALTIES. (a) A person commits an offense if, in violation of a rule adopted under Section 71.007 or 71.0081 of this code, the person:

(1) sells, carries, or transports a plant, plant product, or substance that is found to be infested or infected or found to be from a quarantined area;

(2) sells, carries, or transports a plant, plant product, or substance into a pest-free zone;

(3) maintains ripening fruit during the host-free period on any tree declared to be a nuisance in the quarantine order;

(4) fails or refuses to administer the treatment provided for, including specific methods of spraying, removal of diseased parts, removal and destruction of fallen or culled fruits, or removal of weeds or plants that may be hosts or carriers of insect pests or plant diseases; or

(5) fails to store products in the manner required.

(b) An offense under this section is a Class C misdemeanor.

(c) A person commits a separate offense for each plant or plant product sold or transported.

(d) An offense under this section may be prosecuted in any county in which the violation occurs.

Acts 1981, 67th Leg., p. 1155, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 244, ch. 22, art. II, Sec. 7, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 45, eff. Sept. 1, 1989.

SUBCHAPTER B. INSPECTION OF NURSERY PRODUCTS AND FLORIST ITEMS

Sec. 71.041. DEFINITIONS. In this subchapter:

(1) "Florist" means a person who maintains, grows, raises, or buys and offers for sale or lease for profit florist items.

(2) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(3) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown for, kept for, or is capable of, propagation and distribution for sale or lease.

(4) "Nursery grower" means a person who grows more than 50 percent of the nursery products or florist items that the person either sells or leases, regardless of the variety sold, leased, or grown.

(5) "Nursery stock weather protection unit" means a plant cover consisting of a series of removable, portable metal hoops, covered by nonreusable plastic sheeting, shade cloth, or other similar removable material, used exclusively for protecting nursery products from weather elements. A nursery stock weather protection unit is an implement of husbandry for all purposes, including Article VIII, Section 19a, of the Texas Constitution.

Acts 1981, 67th Leg., p. 1155, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 46, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 102, Sec. 1, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 52, Sec. 10, eff. May 7, 2001.

Sec. 71.042. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may adopt rules as necessary for the immunity and protection of plants from diseases and insect pests,

including rules that:

(1) regulate the traffic, growing, shipping, selling, and leasing of nursery products;

(2) provide for the inspection and control of florist items; and

(3) relate to city, private, or public parks, or shade trees, shrubbery, and ornamentals along city streets or property or on city residences.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 47, eff. Sept. 1, 1989.

Sec. 71.043. ANNUAL REGISTRATION. (a) A florist or nursery owner must register with the department under this section each nursery, greenhouse, orchard, garden, or other place growing for sale or lease, offering for sale or lease, or otherwise distributing a florist item or nursery product.

(b) A florist or nursery owner may apply for registration or renewal of registration by submitting an application prescribed by the department and 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.

(b-1) The department shall allow an applicant to elect whether to pay the amount described by Subsection (b)(2). An applicant is not required to pay that amount to apply for or renew registration.

(c) Registrations under this section expire 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.

(e) A person may not offer for sale or lease a nursery product

or florist item without a registration certificate issued under this section.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 48, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.27, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 960 (H.B. 3496), Sec. 2, eff. June 19, 2009.

Sec. 71.044. INSPECTION. (a) At least once every three years the department shall inspect each nursery, greenhouse, orchard, garden, florist, nursery stock weather protection unit, or other place growing for sale or lease or offering for sale or lease a nursery product, florist item, or other item of plant life in order to determine if the product, item, or premises are infected with a disease or insect pest injurious to human, animal, or plant life.

(b) The department shall perform additional inspections to the extent necessary to ensure compliance with this subchapter and quarantine agreements with the federal government and other state governments.

(c) A department inspector may examine invoices or other documents relating to the shipping and receiving of nursery/floral products for the purpose of determining the origin, transit, and chain of custody of nursery/floral items found to be:

(1) infested with pests or infected with plant disease; or

(2) shipped in violation of state or federal quarantine laws, regulations, or agreements.

(d) This section does not apply to a physical location maintained by a registrant under Section 71.043 who does not maintain an inventory of nursery products or florist items at the location.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 49, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 102, Sec. 2, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 52, Sec. 11, eff. May 7, 2001.

Sec. 71.046. TREATMENT OR DESTRUCTION OF DISEASED OR INFESTED PLANTS OR PREMISES. (a) If the department determines that any

nursery product, florist item, or premises are diseased or pest infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare. If the department determines that the diseased or infested product, item, or premises should be treated or destroyed, the department shall give written notice to the owner, manager, or person in control of the product, item, or premises.

(b) The department shall deliver the notice under Subsection (a) of this section in person or by registered or certified mail to the last known address of the person to whom the notice is directed. The notice shall be in a form prescribed by the department and signed by the commissioner or the commissioner's designee. The notice must:

(1) name the product, item, or premises to be treated or destroyed;

(2) give a brief statement of the facts found to exist; and

(3) give a brief statement of the reasons necessitating treatment or destruction of the product, item, or premises.

(c) Before the 11th day following the day on which notice is received, the person receiving the notice shall remove, destroy, or treat the product, item, or premises as directed by the department.

(d) For the purposes of enforcing this section, the department is entitled to enter on any premises in order to inspect, treat, or destroy any diseased or pest infested nursery product, florist item, or premises.

(e) The department is not liable for damages resulting from the exercise of duties under this section.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.047. EXPENSE OF TREATMENT. (a) The owner, manager, or person in charge of the nursery product, florist item, or premises is liable for all expenses of treatment or destruction under Section 71.046 of this code.

(b) The department or the county attorney of the county in which the premises are located may sue to recover expenses under Subsection (a) of this section. If successful, the department or county attorney is entitled to an award of all costs of suit, including attorney's fees.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.048. APPEAL OF NOTICE OR ORDER. (a) A person who is aggrieved by an order or notice of the department or whose property is to be destroyed under an order or notice is entitled to appeal to a district court of Travis County or to a district court of the county in which the order or notice affects the person.

(b) In order to perfect an appeal under this section, the person must file suit before the 11th day following the day on which the person received the notice or order.

(c) A court may hear and determine an appeal under this section during term or vacation.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.049. ENFORCEMENT OF NOTICE OR ORDER. (a) If the court decides against the appealing party under Section 71.048 of this code or if a party fails to perfect an appeal, the notice or order is final and the department shall enforce the notice or order and place the subject premises in compliance.

(b) On request of the department, a sheriff or constable shall accompany and assist the department in enforcement of the notice.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.050. CERTIFICATE TO ACCOMPANY SHIPMENT. (a) Nursery products or florist items offered for sale or lease, consigned for shipment, or shipped by freight, express, or other means of transportation shall be accompanied by a copy of the certificate of inspection issued by the department when required by foreign countries or other states for agricultural products exported from this state.

(b) A copy of the certificate of inspection shall be attached to each car, box, bale, package, or item. If the car, box, bale, package, or item is delivered to more than one person, each portion shall also bear a copy of the certificate.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, Sec. 51, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.28, eff. Sept. 1, 1995.

Sec. 71.051. IMPORTATION CERTIFICATES. (a) Except as otherwise provided by department rule, a person may not ship a nursery product or florist item into this state without first obtaining a certificate of inspection issued by the proper authority of the state from which the shipment originates.

(b) A certificate of inspection from another state must show:

(1) that the nursery product or florist item shipped has been examined by the inspection officers of the originating state;

(2) that the nursery product or florist item is apparently free from dangerous insect pests or contagious diseases; and

(3) if the department requires fumigation or other special treatment, that the nursery product or florist item has been properly fumigated or treated.

(c) Except as otherwise provided by department rule, each car, box, bale, or package of a nursery product or florist item shipped into this state shall bear a tag printed with a copy of the certificate of inspection from the originating state.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.29, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 196, Sec. 4, eff. Sept. 1, 2003.

Sec. 71.053. INSPECTION OF SHIPMENTS. (a) The department shall inspect shipments of nursery products or florist items in this state to determine if the shipments are accompanied by the tags and certificates required by this subchapter and are free of pests or plant diseases.

(b) If the department finds that a shipment of a nursery product or florist item is diseased or pest-infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare as provided in Section 71.046 of this subchapter.

(c) If the department finds that a shipment of a nursery product or florist item is not accompanied by a required tag or certificate, the department shall treat the shipment as infected and

may destroy or dispose of the shipment as provided in Section 71.046 of this subchapter.

Acts 1981, 67th Leg., p. 1158, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 53, eff. Sept. 1, 1989.

Sec. 71.054. PROTECTION OF CARRIERS FROM LIABILITY; REPORTING OF UNLAWFUL SHIPMENTS. (a) A transportation company or common carrier is not liable for damages to a consignee or consignor for refusing to receive for transportation or refusing to deliver a shipment of a nursery product or florist item that is not accompanied by a tag or certificate required under this subchapter.

(b) A transportation company or common carrier shall immediately report to the department any shipment not accompanied by a tag or certificate required under this subchapter.

Acts 1981, 67th Leg., p. 1158, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.055. REVOCATION OF CERTIFICATE. The department may revoke a certificate issued under this subchapter if it finds that the person to whom the certificate was issued:

(1) made a false representation; or

(2) violated or refused to comply with this subchapter or a rule or instruction of the department under this subchapter.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 50, eff. Sept. 1, 1989.

Sec. 71.056. INSPECTION FEES. (a) The department shall fix by rule and collect a fee for inspection of nursery products or florist items when the inspection is required by foreign countries or other states for nursery products or florist items exported from this state.

(b) The department shall account for fees collected under this section in the manner and method prescribed by the comptroller.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 62, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 54, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 584, Sec. 116, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.30, eff. Sept. 1, 1995.

Sec. 71.057. NURSERY DEALERS AND AGENTS; ANNUAL REGISTRATION. (a) A person who buys and sells or leases or offers for sale or lease a nursery product and who has facilities that maintain or preserve the nursery product and prevent that product from becoming dry, infested, or diseased is a nursery dealer.

(b) A person is a nursery agent if the person sells or leases, offers for sale or lease, or takes mail orders for the sale or lease of a nursery product and:

(1) is entirely under the control of a nursery grower or nursery dealer with whom the nursery product offered for sale or lease originates; or

(2) operates on a cooperative basis for handling a nursery product with a nursery grower or nursery dealer.

(c) A nursery agent shall possess proper credentials from the nursery grower or nursery dealer the agent represents or cooperates with. A nursery agent who fails to possess proper credentials is subject to this subchapter as a nursery dealer.

(d) A nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product.

(e) A nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and 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 nursery dealer or nursery agent offers a nursery product for sale or lease; 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.

(e-1) The department shall allow an applicant to elect whether to pay the amount described by Subsection (e)(2). An applicant is not required to pay that amount to apply for or renew registration.

(f) Registrations under this section expire 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.

(g) 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.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 55, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.31, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 960 (H.B. 3496), Sec. 3, eff. June 19, 2009.

Sec. 71.058. PENALTIES. (a) A person commits an offense if the person wilfully or negligently:

(1) violates a provision of this subchapter; or

(2) fails or refuses to comply with a notice, order, or rule of the department under this subchapter.

(b) An offense under Subsection (a) of this section is a Class C misdemeanor.

(c) Each day that a person maintains premises in a condition not in compliance with this subchapter after receiving notice by registered or certified mail under Section 71.046 of this code is a separate offense.

(d) Repealed by Acts 2001, 77th Leg., ch. 52, Sec. 1.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 56, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 52, Sec. 14(1), eff. May 7, 2001.

Sec. 71.059. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $50 nor more than $1,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the

county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 57, eff. Sept. 1, 1989.

Sec. 71.060. STOP-SALE ORDER. (a) If the department has reason to believe that a florist item or nursery product is in violation of this subchapter or a rule adopted under this subchapter, the department may issue and enforce a written order to stop the sale of the florist item or nursery product. The department shall present the order to the owner or the person in control of the florist item or nursery product. The person who receives the order may not sell the florist item or nursery product until discharged by a court under Subsection (b) of this section or until the department determines that the florist item or nursery product is in compliance with this subchapter and the rules adopted under this subchapter.

(b) The owner or the person in control of any florist item or nursery product prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the florist item or nursery product is found for a judgment as to the justification of the order and for the discharge of the florist item or nursery product from the order in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this subchapter.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 58, eff. Sept. 1, 1989.

SUBCHAPTER C. INSPECTION OF VEGETABLE PLANTS

Sec. 71.101. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may appoint inspectors and adopt rules necessary for that enforcement.

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.102. FIELD INSPECTION. The department shall conduct field inspections of vegetable plants and certify those plants prior to the preparation for shipment in order to provide the purchaser of the plants with an honest and reliable opinion on the freedom of the plants from disease and fungus infection and insect infestation and to ensure the proper packaging and handling of certified plants.

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.103. INSPECTION CERTIFICATE. (a) Except as provided by Subsection (b) of this section, if the department determines following field inspection that the vegetable plants inspected are apparently free of injurious pests and of the diseases and insects listed in Sections 71.104-71.109 of this code, as applicable, the department shall issue a certificate tag or stamp for those plants. Plants certified under this section shall be known as "state certified plants."

(b) In addition to field inspections of sweet potatoes, certification of that plant shall be based on prior inspection of seed potatoes in the field, treatment, and bedding inspections that the department considers necessary to provide clean slips for sale or shipment. Application for certification of sweet potato plants shall be made prior to harvesting time of the preceding season.

(c) The certificate tag or stamp shall be firmly affixed to each container or bundle of plants at the point of origin for shipment of the plants.

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1997, 75th Leg., ch. 211, Sec. 6, eff. Sept. 1, 1997.

Sec. 71.104. TOMATO DISEASES AND INSECTS. The department shall determine that tomato plants are apparently free from the following diseases and from damaging infestation of the following pests:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Nematode root knot	Heterodera marioni
Early blight	Alternaria solani
Collar rot	Alternaria solani
Grey leaf spot	Stemphyllium solani
Late blight	Phytophthora infestans
Fusarium wilt	Fusarium lycopersici
Verticillium wilt	Verticillium albo-atrum
Bacterial wilt	Bacterium solanacearum
Bacterial canker	Coryneil bacterium michiganense
Bacterial spot	Xanthomonas vesicatoria
Southern blight	Sclerotium rolfsii
Mosaic	Virus
INSECTS	SCIENTIFIC NAME OF ORGANISM
Garden fleahopper	Halticus citri
Thrips	Thrips tabaci and others
Flea beetle	Phyllotreta spp.
Serpentine leaf miner	Liriomyza pusilla

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.105. CRUCIFEROUS PLANT DISEASES AND INSECTS. The department shall determine that cruciferous plants, including cabbage, cauliflower, broccoli, and collards, are apparently free from the following diseases and from damaging infestation of the following insects:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Nematode root knot	Heterodera marioni
Black rot	Bacterium campestre

Yellows	Fusarium conglutinans
Blackleg	Phoma lingam
INSECTS	
Aphid	Brevicoryne brassicae and Rhopalosiphum pseudobrassicae

Acts 1981, 67th Leg., p. 1161, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.106. PEPPER DISEASES. The department shall determine that pepper plants are apparently free from the following diseases:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Nematode root knot	Heterodera marioni
Southern blight	Sclerotium rolfsii
Bacterial spot	Xanthomonas vesicatoria
Bacterial wilt	Bacterium solanacearum
Verticillium wilt	Verticillium albo-atrum
Mosaic	Virus

Acts 1981, 67th Leg., p. 1161, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.107. ONION DISEASES AND INSECTS. The department shall determine that onion plants are apparently free from the following diseases and from damaging infestation of the following insects:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Pink root	Phoma terrestris
INSECTS	
Thrips	Thrips tabaci

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.108. EGGPLANT DISEASES. The department shall determine that eggplants are apparently free from the following diseases:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Nematode root knot	Heterodera marioni

Southern blight	Sclerotium rolfsii
Leaf spot and fruit rot	Phomopsis vexans
Verticillium wilt	Verticillium albo-atrum
Bacterial wilt	Bacterium solanacearum
Yellows	Virus

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.109. SWEET POTATO DISEASES AND INSECTS. The department shall determine that sweet potato plants are apparently free from the following plant diseases and insects:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Stem rot or wilt	Fusarium batatis
Black rot	Sphaeronema fimbriatum
Pox	Cystospora batata
Nematode root knot	Heterodera marioni
Internal cork	Virus
INSECTS	
Sweet potato weevil	Cylas formicarius

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.110. TREATMENT OR DESTRUCTION OF PLANTS. (a) If, at the time of field inspection, the department finds an injurious pest or disease or insect listed in Sections 71.104-71.109, as applicable, the grower of the plants shall delimit the infection or infestation and clean the plants by use of a disinfectant.

(b) If infected or infested plants are not able to be cleaned under Subsection (a) of this section, the grower may destroy the part of the field infected or infested and the department may certify the remaining clean part of the field.

(c) The grower of the plants shall furnish all materials, labor, and supervision necessary for carrying out this section.

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1997, 75th Leg., ch. 211, Sec. 7, eff. Sept. 1, 1997.

Sec. 71.111. CERTIFICATE FOR IMPORTED PLANTS. (a) Except as provided by Subsection (b) of this section, a plant subject to certification under this subchapter that is shipped into this state shall have attached a certificate tag or stamp issued by the department and affixed at the point of origin.

(b) If another state has a vegetable plant certification program similar to the program established by this subchapter, the department may enter into a reciprocal fee agreement with the other state under which vegetable plants with a certificate tag or stamp issued by the other state are permitted to enter this state without a certificate tag or stamp issued by this state.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.112. PROTECTION OF CARRIERS FROM LIABILITY. A transportation company or common carrier is not liable for damages to the consignee or consignor for refusing to receive for transportation or refusing to deliver plants subject to certification under this subchapter that are not accompanied by a certificate tag or stamp.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.113. REVOCATION OF CERTIFICATE. The department may revoke a certificate tag or stamp issued to a plant grower who:

(1) makes a false representation; or

(2) refuses to comply with this subchapter.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.114. FEES. (a) A person applying for a certificate tag or stamp shall pay an inspection fee at the time of application.

(b) The department shall charge an inspection fee, as provided by rule of the department.

(c) In addition to the inspection fee, a person applying for certification of sweet potatoes shall pay a fee, as provided by department rule, for each certificate tag or stamp issued.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 211, Sec. 8, eff. Sept. 1, 1997.

Sec. 71.115. PACKAGING AND LABELING OF CERTIFIED PLANTS. (a) Each bundle or package of certified plants must be plainly labeled on the container with the count of the plants bundled or packaged. The actual count may not differ by more than five percent from the stated count.

(b) Sweet potato plants to be shipped must be packaged in bundles of 100 plants.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.116. PENALTIES. (a) A person commits an offense if the person:

(1) wilfully or negligently violates a provision of this subchapter; or

(2) makes a false representation of plants by use of a certificate tag or stamp.

(b) An offense under this section is a Class C misdemeanor.

(c) A person finally convicted of an offense under this section shall be removed from the list of certified growers for a period of 12 months.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 59, eff. Sept. 1, 1989.

Sec. 71.117. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 60, eff. Sept. 1, 1989.

SUBCHAPTER D. NOXIOUS AND INVASIVE PLANTS

Sec. 71.151. LIST REQUIRED. (a) The department by rule shall publish a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state. The department may publish lists of noxious and invasive plant species organized by region.

(b) In preparing or amending a list under this section, the department shall:

(1) consult with representatives from the agriculture industry, the horticulture industry, the Texas Cooperative Extension, the Texas Department of Transportation, the State Soil and Water Conservation Board, and the Parks and Wildlife Department;

(2) consider any available scientific data and economic impact information for each plant species; and

(3) use any standard criteria established by the department.

Added by Acts 2003, 78th Leg., ch. 900, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 618 (H.B. 2313), Sec. 2, eff. September 1, 2005.

Sec. 71.152. NOXIOUS OR INVASIVE PLANT SALE, DISTRIBUTION, OR IMPORTATION PROHIBITED. (a) A person commits an offense if the person sells, distributes, or imports into the state a noxious or invasive plant species included on the department's list described under Section 71.151.

(b) An offense under this section is a Class C misdemeanor.

(c) A person commits a separate offense for each noxious or invasive plant item or unit sold, distributed, or imported.

Added by Acts 2003, 78th Leg., ch. 900, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 618 (H.B. 2313), Sec. 3, eff. September 1, 2005.

Sec. 71.153. LOCAL REGULATION. (a) A political subdivision may not adopt an ordinance or rule that restricts the planting, sale, or distribution of noxious or invasive plant species.

(b) This section does not limit the preparation and distribution of educational materials relating to plants of local concern.

Added by Acts 2005, 79th Leg., Ch. 618 (H.B. 2313), Sec. 4, eff. September 1, 2005.

Sec. 71.154. DISCLAIMER REQUIRED. (a) A public entity, other than the department, that produces for public distribution to commercial or residential landscapers a list of noxious or invasive terrestrial plant species that includes a species growing in this state shall provide with the list a disclaimer that states: "THIS PLANT LIST IS ONLY A RECOMMENDATION AND HAS NO LEGAL EFFECT IN THE STATE OF TEXAS. IT IS LAWFUL TO SELL, DISTRIBUTE, IMPORT, OR POSSESS A PLANT ON THIS LIST UNLESS THE TEXAS DEPARTMENT OF AGRICULTURE LABELS THE PLANT AS NOXIOUS OR INVASIVE ON THE DEPARTMENT'S PLANT LIST."

(b) A public entity, other than the department, that produces a list of noxious or invasive terrestrial plant species in printed material made for public distribution to commercial or residential landscapers, including a newspaper, trade publication, notice, circular, or Internet website, shall post the disclaimer required by

Subsection (a) in at least 12-point type in a conspicuous location readily visible by persons viewing the list.

(c) The department shall adopt rules requiring a public entity to include the disclaimer required by Subsection (a) in a manner equivalent to the manner described by Subsection (b) for publication of the entity's list of noxious or invasive terrestrial plant species through media not described by Subsection (b), including billboards, radio productions, and television productions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 688 (H.B. 338), Sec. 1, eff. September 1, 2011.

CHAPTER 72. MEXICAN FRUIT FLY CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 72.001. DEFINITIONS. In this chapter:

(1) "Host fruit" means a fruit susceptible to infestation by the Mexican fruit fly.

(2) "Mexican fruit fly" means the insect Anastrepha ludens, Loew.

(3) "Premises" means a grove, orchard, farm, yard, lawn, or tract of land on which citrus or other host fruit is grown, enclosed or unenclosed, or a barn, storehouse, warehouse, shed, boxcar, truck, or other building, receptacle, or conveyance capable of use for storing, packing, processing, or transporting citrus or other host fruits.

(4) "Quarantined area" means a county or part of a county under a quarantine or modified quarantine.

(5) "Sell" includes offer to sell, expose for sale, possess for sale, exchange, barter, or trade.

Acts 1981, 67th Leg., p. 1165, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.002. ADMINISTRATION; RULES. (a) The department shall administer this chapter in order to control or eradicate the Mexican fruit fly in this state and to protect all premises in this state from that pest.

(b) The department may adopt rules as necessary for the administration of this chapter.

Acts 1981, 67th Leg., p. 1165, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.16, eff. September 1, 2009.

Sec. 72.004. ENTRY POWER. In enforcing this chapter, the department may enter on any premises to inspect the premises or a tree, plant, shrub, or fruit growing or stored on the premises.

Acts 1981, 67th Leg., p. 1165, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.005. REPORTS AND NOTICES. A report, notice, statement, or record required by this chapter shall be in English and, unless otherwise provided, shall be in writing.

Acts 1981, 67th Leg., p. 1165, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.006. PROSECUTIONS. On request of the department, an enforcement officer, or another interested person, the district or county attorney of any county in which a violation of a provision of this chapter occurs shall prosecute the violation.

Acts 1981, 67th Leg., p. 1165, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. QUARANTINES

Sec. 72.011. ESTABLISHMENT. (a) When advised of the existence of Mexican fruit fly within a county or part of a county in this state, the department shall certify that fact and proclaim the county or part of a county quarantined under this chapter.

(b) If the department determines that the exigencies of the situation require a modified quarantine, the department may designate a modified quarantined area.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 9.23(3), eff. September 1, 2009.

Acts 1981, 67th Leg., p. 1165, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.17, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.23(3), eff. September 1, 2009.

Sec. 72.012. PERSONS AND PREMISES SUBJECT. The premises of each individual, whether an owner, lessee, renter, tenant, or occupant, within the area named in the quarantine are subject to the quarantine, even though not specifically named.

Acts 1981, 67th Leg., p. 1166, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.18, eff. September 1, 2009.

Sec. 72.013. TERM. A quarantine established under this subchapter is effective until modified or removed by the department.

Acts 1981, 67th Leg., p. 1166, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.014. DESIGNATED COUNTIES. Cameron, Hidalgo, and Willacy counties are designated as quarantined for the purposes of this chapter.

Acts 1981, 67th Leg., p. 1166, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.015. MOVEMENT OF FRUIT IN VIOLATION OF QUARANTINE; CERTIFICATE. (a) A person may not haul, truck, or otherwise move citrus fruit from any premises or area that is under quarantine for Mexican fruit fly infestation by this chapter or by order of the department in violation of the quarantine without a written permit or certificate issued by the department or an inspector of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, United States Department of Agriculture.

(b) A person may not move citrus fruit into this state from any state, nation, territory, or area that is under quarantine for Mexican fruit fly infestation by the department, by the Plant

Protection and Quarantine Programs, Animal and Plant Health Inspection Service, United States Department of Agriculture, or by the sanitary authority of the state, nation, or territory from which the fruit is moved, without a certificate issued by the department.

(c) A person who has been issued a certificate under Subsection (a) or (b) of this section may not transport citrus fruit from a quarantined area to any place other than the place designated on the certificate.

(d) An owner, part owner, or caretaker may not permit or allow citrus fruit to be shipped or transported in violation of Subsection (a) or (b) of this section.

Acts 1981, 67th Leg., p. 1166, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.19, eff. September 1, 2009.

SUBCHAPTER C. INFESTATION CONTROL

Sec. 72.021. DETERMINATION OF INFESTATION. (a) If an accredited entomologist finds or knows that the larvae of the Mexican fruit fly exist on premises within a quarantined area, the entomologist shall certify the fact of the infestation to the department.

(b) The department shall determine whether the infestation exists and the extent of the infestation. The department may refer the issue to the citrus quarantine advisory committee of any county in which the premises are located.

Acts 1981, 67th Leg., p. 1166, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.022. CITRUS QUARANTINE ADVISORY COMMITTEE. (a) The commissioners court of a county in a quarantined area shall appoint a citrus quarantine advisory committee composed of four citrus growers and one representative of the department. The four citrus growers appointed by the court are subject to the approval of the department. The department shall nominate its representative on the committee.

(b) If advised by the department that an infestation exists on premises within the county, the advisory committee shall determine the extent of the infestation and recommend to the department the

procedure for eliminating the infestation.

Acts 1981, 67th Leg., p. 1167, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.023. METHOD OF CONTROL. (a) Taking into consideration the recommendations of the appropriate citrus quarantine advisory committee, the department shall determine the best method of controlling or eradicating a Mexican fruit fly infestation.

(b) The department shall serve written findings and directions for control or eradication of the infestation on the owner of the infested premises. The owner shall immediately comply with the directions of the department.

Acts 1981, 67th Leg., p. 1167, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.024. HOST-FREE PERIOD. (a) The department may adopt the host-free period adopted by the United States Department of Agriculture for Mexican fruit fly quarantine in this state. During a host-free period, host fruits may not be produced or permitted to remain on trees within a quarantined area.

(b) All old crop fruit shall be removed from premises in a quarantined area at the beginning of an annual host-free period.

(c) In addition to other fruits declared by the department to be host fruits, the following fruits are host fruits for the purpose of this chapter:

(1) mangoes;

(2) sapotas, including sapodillas, fruits of the family Sapotaceae and the genus Casimiroa, and all other fruits commonly called sapotas or sapotes;

(3) peaches;

(4) guavas;

(5) apples;

(6) pears;

(7) plums;

(8) quinces;

(9) apricots;

(10) mameys;

(11) ciruelas; and

(12) all citrus fruits, except lemons, sour limes,

calamondin, and citrus fruit that, because of its stage of development during the host-free period, will mature during the period of the year not within the host-free period.

Acts 1981, 67th Leg., p. 1167, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.025. UNHUSBANDLIKE AND UNSANITARY CONDITIONS; ORDERS OF DEPARTMENT. (a) It is a public nuisance to maintain premises in a quarantined area in an unhusbandlike or unsanitary condition. A person maintains an unhusbandlike or unsanitary condition if the person:

(1) has host fruit on trees on the premises during the host-free period; or

(2) permits fallen, refuse, or cull fruit to remain on the ground or premises for a period of seven days or more during the harvest period.

(b) Within the harvest period, each person shall clean fallen, refuse, or cull fruit from his or her premises once in each seven-day period. The fruit shall be buried at a depth of not less than 18 inches below the surface of well-tamped soil or disposed of in another manner satisfactory to the department.

(c) The department may order each owner, part owner, or caretaker of premises subject to this chapter to place the premises in husbandlike and sanitary condition. The order shall be in writing, dated, and signed or stamped by the commissioner or the commissioner's designee. The order shall direct the owner, part owner, or caretaker to place the premises in husbandlike and sanitary condition under the supervision of an inspector of the department. If the owner is a nonresident, the department shall give the owner 10 days' notice of the order by registered mail.

Acts 1981, 67th Leg., p. 1167, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.026. EXPENSES OF AND RESPONSIBILITY FOR COMPLIANCE WITH ORDER OF DEPARTMENT. (a) If the department issues an order under Section 72.025(c) of this code, the owner, part owner, or caretaker of the premises involved shall furnish the labor necessary to comply with the order at his or her own expense.

(b) An administrator, executor, or guardian is responsible for

the execution of orders under Section 72.025(c) of this code relating to premises that are part of an estate under the control of that person by reason of the administration or guardianship.

(c) A husband and wife are jointly and severally responsible for the execution of an order under Section 72.025(c) of this code in relation to their community estate. Each spouse is responsible for the execution of an order in relation to his or her separate estate. In addition, each spouse is responsible for the execution of an order in relation to the other spouse's separate estate if he or she is the caretaker of premises belonging to the separate estate of the other spouse.

Acts 1981, 67th Leg., p. 1168, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. REMEDIES

Sec. 72.041. APPEAL OF DEPARTMENT ORDER. A person aggrieved by an order of the department may appeal to a court of competent jurisdiction within the county in which the premises subject to the order are located.

Acts 1981, 67th Leg., p. 1168, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.042. ENFORCEMENT OF DEPARTMENT ORDER; FEES. (a) If a person fails to comply with an order of the department under Section 72.025(c) of this code before the 11th day following the day on which the person received the order, the department shall file suit in a court of competent jurisdiction to have the premises subject to the order declared a public nuisance. In addition, the department may petition the court to appoint a receiver for the premises.

(b) In an action under this section, it is presumed that the person on whom the order was served was the owner, part owner, or caretaker when the time for compliance expired, and the state is required only to allege and prove that, at the time the order was served, the person was the owner, part owner, or caretaker of the premises subject to the order.

(c) Venue for a suit under this section is in the county in which the premises subject to the order are located.

(d) A court may hear and dispose of all issues in an action under this section in term or during vacation.

(e) The department may not be required to post a cost bond in an action under this section.

(f) The owner of the premises shall give notice as the court determines necessary.

(g) If the court finds the premises to be a public nuisance, the department may enter the premises and place them in compliance with the order. The owner shall pay to the department an amount not to exceed twice the minimum wage established under state law a person, as allowed by the court, for each hour actually expended placing the premises in compliance with the order. In addition, the owner shall pay to the department the sum of $250, not as a penalty but as reasonable compensation for the time involved in the execution of the order.

Acts 1981, 67th Leg., p. 1168, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 61, eff. Sept. 1, 1989.

Sec. 72.043. LIEN. (a) For the purpose of securing the payment of fees under Section 72.042 of this code, the department has a lien on all citrus fruit growing or standing on premises declared by the court to be a public nuisance. The department may enforce the lien in the manner provided by either Subsection (b) or (c) of this section.

(b) If no receiver has been appointed, the department may enforce the lien by selling at public sale to the highest bidder any fruit subject to the lien. The sale shall be conducted at the courthouse door. If a receiver has been appointed, the receiver shall conduct the sale. Proceeds of the sale in excess of the amount owed to the department shall be paid to the owner of the premises or to the county treasurer subject to the order of the owner.

(c) The department may fix the lien by filing the lien, a sworn statement of the indebtedness, and a description of the property subject to the lien with the county clerk of the county in which the premises are located. The lien must be filed before the 31st day following the last day of action by the department under Section 72.042(g) of this code. Within 24 months after filing the lien, the department shall file suit in a court of competent jurisdiction for collection of the account and foreclosure of the lien. Neither the

department nor any person to whom the account is assigned may be required to post a cost bond in that suit. The court shall enter judgment for the debt with interest and costs of suit and foreclosing the lien on premises as the court determines necessary for defraying expenses, court costs, and the fees owed.

(d) In an action under Subsection (c) of this section, the department may file a separate statement and separate suit covering each necessary action of the department to enforce compliance or may wait until a number accrue and file one statement and one suit covering all necessary actions.

(e) A peace officer authorized by law to serve in the area in which the lien is enforced may perform the functions of the department under this section.

Acts 1981, 67th Leg., p. 1169, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.044. INJUNCTIONS; MANDAMUS. (a) If a person responsible for execution of an order under Section 72.025(c) of this code fails or refuses, or threatens to fail or refuse, to comply with the order, a resident of the county or part of the county in which Mexican fruit fly control or eradication is being conducted may sue for an injunction to compel that person to place the premises in sanitary conditions in accordance with this chapter. If the court finds that the person responsible for compliance has been served with a written order, that the premises are subject to the order, and that the material allegations in the petition are true, the court shall enter an order commanding the person to comply immediately with the written directions of the department. A person who refuses to comply with the court's order may be punished for contempt of court.

(b) Any resident of this state may sue for an injunction or mandamus to compel compliance with this chapter or to restrain a violation of this chapter. Notice of the hearing to the opposite party may be given under the direction of the court, if the court determines that justice requires the notice.

(c) A court may hear and determine a cause under this section in term or in vacation.

Acts 1981, 67th Leg., p. 1169, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.045. SEIZURE OF OWNERLESS FRUIT. If the department is not able to locate an owner, part owner, or caretaker for premises in a county in which Mexican fruit fly control or eradication is being conducted, the department may seize any citrus fruit growing or standing on the premises and sell the fruit in the manner provided by Section 72.043(b) of this code.

Acts 1981, 67th Leg., p. 1170, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 72.046. CIVIL PENALTY; INJUNCTION. (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 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 62, eff. Sept. 1, 1989.

SUBCHAPTER E. PENALTIES

Sec. 72.061. GENERAL PENALTY. (a) A person who violates any

provision of this chapter for which a separate penalty is not provided commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1170, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 63, eff. Sept. 1, 1989.

Sec. 72.062. FAILURE TO COMPLY WITH DEPARTMENT ORDER. (a) A person commits an offense if the person fails or refuses to comply with an order of the department under Section 72.025(c) of this code before the 11th day following the day on which the person received the order.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1170, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 64, eff. Sept. 1, 1989.

Sec. 72.063. PUBLIC NUISANCE. (a) A person commits an offense if the person:

(1) fails or refuses to clean quarantined premises or dispose of fruit in accordance with Section 72.025(b) of this code; or

(2) maintains host fruit on trees on quarantined premises during the host-free period.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1170, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 65, eff. Sept. 1, 1989.

Sec. 72.064. MOVEMENT OF FRUIT IN VIOLATION OF QUARANTINE. (a) A person commits an offense if the person violates a provision of Section 72.015 of this code.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1171, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, Sec. 66, eff. Sept. 1, 1989.

CHAPTER 73. CITRUS DISEASES AND PESTS

Sec. 73.001. DEFINITION. In this chapter, "nursery product" has the meaning assigned by Section 71.041 of this code.

Acts 1981, 67th Leg., p. 1171, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 73.002. POLICY. The state recognizes that the citrus industry is a valuable asset and that citrus fruit and trees are highly susceptible to the ravages of insects, pests, and plant diseases. The state shall use all constitutional measures to protect this industry from destruction by pests and diseases.

Acts 1981, 67th Leg., p. 1171, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 67, eff. Sept. 1, 1989.

Sec. 73.003. CITRUS ZONE. The following counties are designated as the citrus zone of this state: Cameron, Willacy, Hidalgo, Starr, Zapata, Jim Hogg, Brooks, Kenedy, Kleberg, Nueces, Jim Wells, Duval, Webb, San Patricio, Refugio, Bee, Live Oak, McMullen, LaSalle, Dimmit, Maverick, Zavala, Frio, Atascosa, Wilson, Karnes, DeWitt, Victoria, Goliad, Calhoun, and Aransas.

Acts 1981, 67th Leg., p. 1171, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 73.004. INJURIOUS DISEASES AND PESTS. In accordance with Subchapter A, Chapter 71, of this code, the department shall establish quarantines against pests and diseases determined by department rule to be injurious.

Acts 1981, 67th Leg., p. 1171, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 211, Sec. 9, eff. Sept. 1, 1997.

Sec. 73.005. MOVEMENT OF INFECTED NURSERY PRODUCTS AND OTHER HOSTS INTO CITRUS ZONE. A person may not ship into the citrus zone a nursery product, seed, citrus fruit, or other host infected with a pest or disease listed in Section 73.004(b) of this code.

Acts 1981, 67th Leg., p. 1172, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 68, eff. Sept. 1, 1989.

Sec. 73.006. CERTIFICATE OF INSPECTION; PERMIT. (a) A person may not ship a citrus nursery product or citrus fruit from outside this state into this state without first filing with the department a certificate of inspection issued by the proper authority of the state in which the shipment originates. The certificate must show:

(1) that the nursery product or fruit to be shipped has been produced in a county known to be free from the pests and diseases listed in Section 73.004(a) of this code; or

(2) that the nursery product or fruit has been fumigated by a method approved by the department that will render it free of pest or disease infestation.

(b) A transportation company or common carrier may not receive, transport, or deliver a shipment of a citrus nursery product or citrus fruit originating outside this state that does not bear:

(1) a shipping tag or label showing the certificate of inspection from the originating state; and

(2) a permit from the department.

(c) A transportation company or common carrier shall immediately report to the department any shipment of a citrus nursery product or citrus fruit that is not accompanied by the certificate and permit required by Subsection (b) of this section.

Acts 1981, 67th Leg., p. 1172, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 73.007. PROTECTION OF CARRIER FROM DAMAGES. A transportation company or common carrier is not liable for damages to a consignor or consignee for refusing to receive for transportation or refusing to deliver a citrus nursery product or citrus fruit, or a package, bale, bundle, or box of that nursery product or fruit, that is not accompanied by the certificate and permit required under

Section 73.006 of this code.

Acts 1981, 67th Leg., p. 1173, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 73.008. DEPARTMENT EMPLOYEES AND EXPENSES OUTSIDE THE STATE. This chapter does not authorize the department to expend money, send employees, or employ persons outside this state.

Acts 1981, 67th Leg., p. 1173, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 73.009. PENALTIES. (a) A person commits an offense if the person violates a provision of Section 73.005 or 73.006 of this code.

(b) An offense under Section 73.005 of this code is a Class A misdemeanor.

(c) An offense under Section 73.006 of this code is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1173, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 69, eff. Sept. 1, 1989.

Sec. 73.010. CIVIL PENALTY; INJUNCTION. (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 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General

Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 70, eff. Sept. 1, 1989.

CHAPTER 74. COTTON DISEASES AND PESTS

SUBCHAPTER A. COTTON PEST CONTROL

Sec. 74.001. PUBLIC NUISANCE. (a) The legislature finds that cotton pests are a menace to the cotton industry, and that control of those pests is a public necessity. Any portion of the state that is susceptible to infestation by cotton pests must be protected from this public nuisance and threat to the continued stability of the cotton industry.

(b) The legislature finds that volunteer and other noncommercial cotton is a public nuisance that threatens the cotton growers' boll weevil eradication program by serving as a host for cotton pests such as boll weevils and pink bollworms. To protect the cotton industry of this state, volunteer and other noncommercial cotton must be eliminated subject to the provisions of this chapter.

Acts 1981, 67th Leg., p. 1173, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 957, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 1, eff. May 27, 2009.

Sec. 74.002. DEFINITIONS. In this subchapter:

(1) "Cotton" includes the cotton plant, cotton in the boll, cotton stalk, and all cotton products, including seed cotton, cottonseed, and cotton hulls, but not including cotton oil or cotton meal.

(2) "Cotton pest" includes the boll weevil and the pink bollworm.

(3) "Host plant" means a plant susceptible to infestation by the boll weevil, pink bollworm, or any other cotton pest.

(4) "Boll weevil" means the insect Anthonomus grandis Boheman, in any stage of development, including the egg, larval, pupal, and adult stages.

(5) "Okra" includes okra stalks.

(6) "Pest management zone" means a geographical zone established by the department under this chapter for purposes of cotton pest control and prevention.

(7) "Pink bollworm" means the insect Pectinophora gossypiella, Saunders, in any stage of development, including the egg, larval, pupal, and adult stages.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 957, Sec. 2, eff. June 16, 1995.

Sec. 74.003. ESTABLISHMENT OF PEST MANAGEMENT ZONES. (a) Any producer organization authorized under the laws of this state or recognized under department rules and representing cotton producers may petition the commissioner for certification to establish a pest management zone. A pest management zone may include all or part of one or more counties.

(b) Within 15 days following the day on which a petition for certification is received, the commissioner shall determine whether or not to grant certification.

(c) If the commissioner determines that, on the basis of information submitted, the petitioning organization is representative of cotton producers within the boundaries described in the petition and that the petition conforms to the purposes and provisions of this subchapter, the commissioner shall certify that the organization is representative of the producers of the commodity within the described area and is authorized to establish a pest management zone.

(d) An administrative committee shall govern each pest management zone. The committee consists of a representative of the department and of cotton producers who represent the counties in the zone and who are appointed by the commissioner. Each county in the zone must be represented by a producer on the committee. The

committee shall:

(1) make recommendations to the department regarding control of cotton pests in the zone, including recommendations on regulations needed to control and prevent cotton pest infestation;

(2) make recommendations on any legislative changes that are needed; and

(3) give advice and counsel to the department regarding effective enforcement of this subchapter within the zone.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 957, Sec. 3, eff. June 16, 1995.

Sec. 74.0031. COTTON STALK DESTRUCTION. (a) The department shall submit the recommendations of each administrative committee that governs a pest management zone under Section 74.003 to the Texas Boll Weevil Eradication Foundation. On review of the administrative committee recommendations, the foundation shall submit to the department an estimate of the amount by which the implementation of each recommendation would increase the cost of administering the boll weevil eradication program.

(b) The Texas Boll Weevil Eradication Foundation shall:

(1) conduct a study of the effects of incomplete cotton stalk destruction and volunteer cotton control on boll weevil eradication activities; and

(2) submit annual recommendations to the department and the board of the foundation for a cotton stalk destruction deadline for each pest management zone.

(c) The Texas Boll Weevil Eradication Foundation may consult with its technical advisory committee in fulfilling its duties under Subsection (b).

(d) The department shall set a cotton stalk destruction deadline for each pest management zone, with consideration given to the recommendations of the foundation and the applicable administrative committee submitted under Subsection (b).

Added by Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 2, eff. May 27, 2009.

Sec. 74.0032. HOSTABLE COTTON FEE. (a) The department shall

establish and collect a hostable cotton fee for fields in which hostable cotton stalks, hostable volunteer cotton, or other hostable noncommercial cotton remains past the stalk destruction deadline set for the applicable pest management zone under Section 74.0031. A fee under this section shall be expressed in terms of dollars per acre, per week in which the stalks, volunteer cotton, or other noncommercial cotton remains in the field. The department shall establish a procedure to notify a cotton grower that a fee is due the department under this section.

(b) If adverse weather conditions or other good cause exists, the administrative committee that governs the applicable pest management zone may request that the department grant an extension of the cotton stalk destruction deadline for any specified part of the pest management zone or for the entire pest management zone. A request under this subsection must be made within the period specified by department rule. A field is not subject to a hostable cotton fee if the department grants an extension of the deadline. The Texas Boll Weevil Eradication Foundation shall submit to the department an estimate of the amount by which an extension under this subsection will increase the cost of administering the boll weevil eradication program.

(c) If the applicable administrative committee does not request an extension, or if the department denies a request for an extension of the cotton stalk destruction deadline for a specified part of a pest management zone, a cotton grower may apply for an individual extension of the deadline. A request under this subsection must be made within the period specified by department rule.

(d) The Texas Boll Weevil Eradication Foundation shall submit to the department an estimate of the amount by which any extension of a stalk destruction deadline that is granted under Subsection (c) will increase the cost of administering the boll weevil eradication program.

(e) Any hostable cotton or hostable cotton stalks that remain in a field after the cotton stalk destruction deadline or any extension of the stalk destruction deadline has passed are subject to the hostable cotton fee established under Subsection (a). Any hostable cotton or hostable cotton stalks that remain in a field for more than 30 days after the stalk destruction deadline or any extension of the deadline are subject to 150 percent of the hostable cotton fee established under Subsection (a).

(f) A hostable cotton fee shall be sent to the comptroller and may be appropriated only for the purpose of treating hostable cotton or for other expenses related to boll weevil eradication. The department may contract with the Texas Boll Weevil Eradication Foundation or its successor entity for the treatment, control, or monitoring activities funded from the account.

(g) Unless the fee is paid on or before the 45th day after the date the department gives notice to a cotton grower that a hostable cotton fee is due, the department may destroy any cotton or cotton stalks that remain in the field, as provided by Section 74.004.

(h) The department shall adopt rules to administer this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 2, eff. May 27, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 83 (S.B. 378), Sec. 1, eff. September 1, 2011.

Sec. 74.004. DESTRUCTION OF HOST PLANTS. (a) On petition of the administrative committee of a pest management zone, the department may establish regulated areas, dates, and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests, including requirements for destruction of foliage, fruiting structures, and root systems of host plants after the harvest deadline.

(b) If on inspection of a field after the harvest deadline, the department determines that host plants or any parts or products of host plants have not been destroyed within the time specified by regulation of the department, the department may declare the field to be a public nuisance.

(c) On the declaration of a field as a public nuisance, the department may take any action necessary to complete destruction of host plants or host plant products or parts to prevent the spread of cotton pests from the infested area and shall:

(1) immediately give written notice to any farm owner and to the operator in charge of the field that the field is in violation of this section, instructing the owner and operator to destroy host plants or host plant products or parts within seven days after the

date written notice is issued;

(2) post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation, if either the owner or operator of the field cannot be located after a reasonably diligent effort by the department; and

(3) have the host plants or host plant products or parts destroyed, if no response is received by the department from either the owner or operator within four days after the date of posting of the notice at the field or if the department considers a response inadequate.

(d) If adverse weather conditions or other good cause exists, the commissioner may, on written request by a farm owner or operator, grant an extension of the date of implementation of appropriate host plant or host plant product or part destruction.

(e) If it becomes necessary for the department to contract with someone to destroy host plants or host plant products or parts, the farm owner or operator shall reimburse the department for 1-1/2 times the actual costs required for destruction.

(f) If neither the farm owner nor operator reimburses the department as provided by Subsection (e) of this section within 30 days after the date of the completion of department action and issuance by the department of a bill requesting payment, the department may place a lien against the property on which a violation of a department regulation under this section has occurred.

(g) The department may perfect the lien by filing the lien, a sworn statement of the indebtedness, and a description of the property subject to the lien with the county clerk of the county in which the property is located. The lien must be filed within a 30-day period following the expiration of the 30-day period described in Subsection (f) of this section. Within 180 days after the date of filing the lien, the department may file suit in a court of competent jurisdiction for collection of the account and foreclosure of the lien. Neither the department nor any person to whom the account is assigned may be required to post a cost bond in the suit. The court shall enter judgment for the debt with interest and costs of suit and foreclosing the lien on premises as the court determines necessary for the defraying of expenses, court costs, and the fees owed.

(h) All reimbursements and additional costs collected under this section shall be deposited in the State Treasury in a special fund to be appropriated to the department to carry out this

subchapter.

(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal or civil sanctions under this subchapter.

(j) In this section, "harvest deadline" means a deadline set by the department for harvesting a certain crop or, in the absence of a department deadline, the 31st day after the date by which the crop is customarily harvested in the region, as determined by the department.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 71, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 847, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 957, Sec. 4, eff. June 16, 1995.

Sec. 74.0041. REGULATION OF PLANTING DATES. On petition of the administrative committee of a pest management zone, the department may establish uniform planting dates for host plants.

Added by Acts 1993, 73rd Leg., ch. 847, Sec. 2, eff. Aug. 30, 1993.

Sec. 74.005. ENTRY POWER; INSPECTIONS. For the purpose of enforcing this chapter, the department is entitled to:

(1) enter any field of host plants or any premises in which a host plant or its product is stored or held;

(2) examine any product, container, or substance susceptible to cotton pest infestation; and

(3) examine the records of a purchaser, handler, or common carrier of host plant products.

Added by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 957, Sec. 5, eff. June 16, 1995.

Sec. 74.006. RULES. The department may adopt rules as are necessary for the efficient enforcement and administration of this subchapter.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987.

Sec. 74.007. OFFENSES; PENALTY. (a) A person commits an offense if the person:

(1) violates a proclamation or a rule or restriction adopted under this subchapter;

(2) brings into this state any equipment or material contaminated with cotton pests; or

(3) fails to comply with a rule adopted for the control and direction of host plant growing.

(b) An offense under this section is a Class B misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 72, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 957, Sec. 6, eff. June 16, 1995.

Sec. 74.008. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than $250 nor more than $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 73, eff. Sept. 1, 1989.

Sec. 74.009. COTTON PEST CONTROL AND ERADICATION POLICY. The state shall employ all constitutional methods to control and eradicate cotton pests that scientific research demonstrates to be successful, including:

(1) inspection of host plants in the field or host plant products where stored;

(2) quarantine and fumigation of equipment, host plants, and host plant products found to be contaminated;

(3) supervision of the growing of host plants in areas known to be contaminated;

(4) destruction of infested fields of host plants or of infested host plant products;

(5) prevention of planting of host plants in areas where infestation has been found; and

(6) prevention of movement of equipment contaminated or reasonably suspected to be contaminated with cotton pests.

Acts 1981, 67th Leg., p. 1175, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.052 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.010. REGULATION OF COTTON PESTS; QUARANTINES. (a) If, under prior law, the department proclaimed a quarantine against infested territory, no person may import into Texas from the quarantined territory a substance susceptible to cotton pest infestation.

(b) The department shall maintain a rigid inspection of substances susceptible to cotton pest contamination that are being carried from quarantined territory into, through, or within this state.

Acts 1981, 67th Leg., p. 1175, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 847, Sec. 3, eff. Aug. 30, 1993. Renumbered from Sec. 74.054 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.011. REGULATION OF GINNING. A ginner may not gin cotton from a regulated zone under this subchapter unless the ginner disinfects the seed in accordance with rules of the department.

Acts 1981, 67th Leg., p. 1175, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.055 by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.012. INSPECTORS. The department may employ and prescribe the qualifications and duties of inspectors and other employees necessary to the administration of this subchapter.

Acts 1981, 67th Leg., p. 1176, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.059 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.013. COOPERATION WITH FEDERAL PROGRAMS. The department shall cooperate with the United States Department of Agriculture in any measure authorized by, and undertaken in accordance with, federal law for preventing the introduction or establishment of cotton pests in this state.

Acts 1981, 67th Leg., p. 1176, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.060 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

SUBCHAPTER D. OFFICIAL COTTON GROWERS' BOLL WEEVIL ERADICATION FOUNDATION

Sec. 74.101. FINDINGS AND DECLARATION OF POLICY. (a) It is hereby found and declared that:

(1) the insects Anthonomus grandis Boheman, known as the boll weevil, and Pectinophora gossypiella, known as the pink bollworm, are public nuisances and a menace to the cotton industry, and their eradication is a public necessity;

(2) because of the differences in soil conditions, growing seasons, farming techniques, and climate conditions among several areas in the state where cotton is grown, the eradication and suppression of the nuisance can best be accomplished by dividing the

cotton-growing areas into separate zones so that integrated pest management programs may be developed for each zone;

(3) there is a need for a quasi-governmental entity acting under the supervision and control of the commissioner whose members are actual cotton growers who would be represented on the board of the entity by directors elected by them to manage eradication and suppression programs and to furnish expertise in the field of insect control and eradication, because such an entity would enhance the interest and participation of cotton growers in the program;

(4) because of the progress made in eradication, investments made by cotton growers in certain areas, the potential injustice to certain cotton growers who have made such investments, and the stage of development of the cotton crops in the statutory eradication zones, an urgent public necessity exists to validate and ratify the assessments, agreements, and obligations of the Texas Boll Weevil Eradication Foundation, Inc., made or incurred by the foundation and related to certain statutory zones;

(5) cotton growers, in partnership with the state and federal governments, have made significant investments toward the eradication of these pests in this state;

(6) it is essential to the well-being of the cotton industry and the agricultural economy of this state that the investments of the cotton growers and the state and federal governments be protected; and

(7) the establishment of a maintenance program to be carried out by the foundation under the supervision of the department is required to protect the investments in eradication.

(b) It is the intent of the legislature that the program of eradication and suppression be carried out with the best available integrated pest management techniques.

(c) The department may recover costs for administration of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.01, eff. May 30, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 1, eff. September 1, 2005.

Sec. 74.1011. DESIGNATION OF ENTITY TO CARRY OUT BOLL WEEVIL ERADICATION. (a) The Texas Boll Weevil Eradication Foundation, Inc., a Texas nonprofit corporation chartered by the secretary of state on September 14, 1993, shall be recognized by the department as the entity to plan, carry out, and operate eradication and diapause programs to eliminate the boll weevil and the pink bollworm from cotton in the state under the supervision of the department as provided by this subchapter.

(b) The commissioner may terminate the foundation's designation as the entity recognized to carry out boll weevil eradication by giving 45 days' written notice to the foundation and by designating a successor entity. If the commissioner designates a successor to the foundation, the successor has all the powers and duties of the foundation under this subchapter. Any successor to the foundation shall assume and shall be responsible for all obligations and liabilities relating to any notes, security agreements, assignments, loan agreements, and any other contracts or other documents entered into by the foundation with or for the benefit of any financial institution or its predecessor, successor, or assignee.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.02, eff. May 30, 1997.

Sec. 74.102. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the Texas Boll Weevil Eradication Foundation, Inc.

(2) "Boll weevil" has the meaning assigned by Section 74.002.

(3) "Commissioner" means commissioner of agriculture.

(4) "Cotton" means:

(A) a cotton plant;

(B) a part of a cotton plant, including bolls, stalks, flowers, roots, and leaves; or

(C) cotton products, including seed cotton, cottonseed, and hulls.

(5) "Cotton grower" means a person who grows cotton intended to be commercial cotton. The term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the cotton grown and available for marketing from a farm or to share in the proceeds from the sale of the cotton from the farm or

from an indemnity or other payment received from or related to the planting, growing, or failure of the cotton.

(6) "Eradication" means elimination of boll weevils or pink bollworms to the extent that the commissioner does not consider further elimination of boll weevils or pink bollworms necessary to prevent economic loss to cotton growers. Eradication includes diapause activities.

(7) "Eradication zone" means a geographic area:

(A) established under Section 74.1021; or

(B) designated by the commissioner in accordance with Section 74.105 in which cotton growers by referendum approve their participation in a boll weevil or pink bollworm eradication program.

(8) "Foundation" means the Texas Boll Weevil Eradication Foundation, Inc., a Texas nonprofit corporation.

(9) "Host" means a plant or plant product in which the boll weevil or pink bollworm is capable of completing any portion of its life cycle.

(10) "Infested" means the presence of the boll weevil or pink bollworm in any life stage or the existence of generally accepted entomological evidence from which it may be concluded with reasonable certainty that the boll weevil or pink bollworm is present.

(11) "Integrated pest management" is the coordinated use of pest and environmental information with available pest control methods, including pesticides, natural predator controls, cultural farming practices, and climatic conditions, to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment.

(12) "Pink bollworm" has the meaning assigned by Section 74.002.

(13) "Regulated article" means an article carrying or capable of carrying the boll weevil or pink bollworm, including cotton plants, seed cotton, gin trash, other hosts, or mechanical cotton harvesters.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.03, eff. May 30, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 3, eff. May

27, 2009.

Sec. 74.1021. STATUTORY ZONES. (a) The Northern High Plains Eradication Zone consists of Armstrong, Bailey, Briscoe, Castro, Deaf Smith, Floyd, Hale, Lamb, Parmer, Randall, and Swisher counties, and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(b) The Rolling Plains Central Eradication Zone consists of Baylor, Callahan, Comanche, Eastland, Erath, Fisher, Haskell, Jones, Knox, Mitchell, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Throckmorton, and Young counties; all land in Archer County south of a line following Farm-to-Market Road 422 commencing at the Baylor County line running east to the intersection of Farm-to-Market Road 210, continuing east to the intersection of State Highway 25, and continuing east to the Clay County line; all land in Borden County east of a line seven miles west of the Scurry County line running south from the Garza County line to the Howard County line; and all land in Taylor County east of U.S. Highway 83 from a point commencing at the intersection of U.S. Highway 83 and the south Taylor County line, north to the town of Bradshaw; thence north of Farm-to-Market Road 1086, as the farm-to-market road proceeds west and north to the intersection of the Farm-to-Market Road 1086 and U.S. Highway 277, being all land lying north of the farm-to-market road and west of U.S. Highway 277 from the intersection of Farm-to-Market Road 1086 and U.S. Highway 277 to the point where U.S. Highway 277 intersects the south boundary line of Taylor County; all land in Brown County east of a line following State Highway 279 to Brownwood and continuing along U.S. Highway 377 south to the McCulloch County line; and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(c) The St. Lawrence Eradication Zone consists of that area of Midland County south of a line 15 miles south of Interstate 20 running from the Ector County line east to the Glasscock County line; Glasscock, Reagan, and Upton counties; and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(d) The South Texas Winter Garden Eradication Zone consists of Aransas, Atascosa, Austin, Bee, Bexar, Brazoria, Calhoun, Colorado,

DeWitt, Dimmit, Duval, Fort Bend, Frio, Goliad, Jackson, Jim Wells, Karnes, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Matagorda, McMullen, Medina, Nueces, Refugio, San Patricio, Uvalde, Victoria, Wharton, Wilson, and Zavala counties, and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added. Austin, Brazoria, Colorado, Fort Bend, Jackson, Matagorda, and Wharton counties are included in the South Texas Winter Garden Eradication Zone only for purposes of the repayment of debt existing on April 30, 1997, and those counties may not be included in the zone for any other purpose unless the commissioner by rule proposes that an area be included in the zone and the proposal is approved by referendum in the area to be added. The commissioner may apportion any debt existing on April 30, 1997, and designate the appropriate assessment.

(e) The Southern High Plains-Caprock Eradication Zone consists of Andrews, Cochran, Crosby, Dawson, Dickens, Ector, Gaines, Garza, Hockley, Howard, Kent, Lubbock, Lynn, Martin, Motley, Terry, and Yoakum counties; all land in Borden County lying west of a line seven miles west of the Scurry County line running south from the Garza County line to the Howard County line; that area of Midland County north of a line 15 miles south of Interstate 20 running from the Ector County line east to the Glasscock County line; and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(f) The Southern Rolling Plains Eradication Zone consists of Coke, Coleman, Concho, Irion, McCulloch, Runnels, Schleicher, and Tom Green counties, all land in Taylor County lying west of U.S. Highway 83 from a point commencing at the intersection of U.S. Highway 83 and the south Taylor County line, north of the town of Bradshaw; thence all the land lying south of Farm-to-Market Road 1086, as the farm-to-market road proceeds west and north to its intersection with U.S. Highway 277, being all land lying south of the farm-to-market road and east of U.S. Highway 277 from the intersection of Farm-to-Market Road 1086 and U.S. Highway 277 to the point where U.S. Highway 277 intersects the south boundary line of Taylor County, and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.04, eff. May 30, 1997.

Sec. 74.1041. ADVISORY COMMITTEES. (a) The commissioner may appoint an advisory committee for an existing eradication zone or an area of the state that is to be considered by the commissioner for designation as or inclusion in an eradication zone. The committee shall gather advice, input, and guidance from cotton growers from the area represented by the committee concerning the interest in and concerns about the implementation of this subchapter.

(b) Each advisory committee may consider and make recommendations to the commissioner and the foundation concerning:

(1) the geographic boundaries for a proposed eradication zone;

(2) the amount of local interest in operating an eradication program;

(3) the basis and amount of an assessment necessary to support an eradication program;

(4) the need to restructure any pre-existing debt from prior eradication activities;

(5) ongoing implementation of an eradication program approved by growers in an eradication zone; and

(6) any other matter requested by the commissioner or the foundation.

(c) Each advisory committee appointed under this section shall include a sufficient number of cotton growers to ensure adequate representation across the eradication zone, including at least one cotton grower from each county in the zone and other persons as determined by the commissioner.

(d) Advisory committees appointed under this section are immune from lawsuits and liability to the same extent the foundation is immune from lawsuits and liability under Section 74.129.

(e) An advisory committee established under this section is subject to the requirements of Chapters 551 and 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.05, eff. May 30, 1997.
Amended by Acts 2001, 77th Leg., ch. 168, Sec. 1, eff. May 18, 2001.

Sec. 74.1042. CREATION OF NONSTATUTORY ERADICATION ZONES. (a) The commissioner may by rule designate an area of the state as a proposed eradication zone as long as the area is not within a statutory zone under Section 74.1021 that has approved an eradication

program by referendum.

(b) The commissioner may hold a public hearing within the proposed eradication zone to discuss the proposed geographic boundaries of the zone. The public hearing may include any other topics allowed under this subchapter.

(c) After the adoption of a rule under Subsection (a), the commissioner shall conduct a referendum under Section 74.105.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.05, eff. May 30, 1997.

Sec. 74.105. ERADICATION ZONE REFERENDA. (a) The commissioner shall conduct a referendum in each proposed eradication zone to determine whether cotton growers desire to establish an eradication zone.

(b) Eradication zone referenda shall be conducted under the procedures provided by Section 74.114 of this code.

(c) A proposed eradication zone referendum ballot must include or be accompanied by information about the proposed eradication zone, including:

(1) a statement of the purpose of the boll weevil or pink bollworm eradication program;

(2) the geographic area included in the proposed eradication zone;

(3) a general summary of rules adopted by the commissioner under Sections 74.114, 74.118, and 74.120 of this code, including a description of:

(A) cotton grower responsibilities; and

(B) penalties for noncompliance with rules adopted under this subchapter; and

(4) an address and toll-free telephone number that a cotton grower may use to request more information about the referendum or the boll weevil or pink bollworm eradication program.

(d) If a referendum to establish an eradication zone fails, the concurrent election of a board member from the proposed eradication zone under Section 74.106 has no effect, and the commissioner shall appoint a representative to the board from the area.

(e) The foundation may request the commissioner to call additional referenda in a proposed eradication zone in which a referendum has failed. An additional eradication zone referendum and

concurrent board election may be held no earlier than one year after the date of the last referendum.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 577, Sec. 8, eff. June 14, 2013.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.06, 2.01, eff. May 30, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 8, eff. June 14, 2013.

Sec. 74.106. BOARD ELECTIONS. (a) The initial election for board members from a proposed eradication zone shall be held concurrently with an eradication zone referendum held under Section 74.105. Each eradication zone shall be represented on the board and shall remain represented on the board until eradication operations are concluded and all debt of the eradication zone is paid.

(b) A board election shall be conducted under the procedures provided by this section and Section 74.114 of this code.

(c) A cotton grower who is eligible to vote in a referendum or election under this subchapter is eligible to be a candidate for and member of the board if the person has at least seven years of experience as a cotton grower and otherwise meets the qualifications for the position.

(d) A cotton grower who wants to be a candidate for the board must meet the qualifications for board membership and file an application with the commissioner. The application must be:

(1) filed not later than the 30th day before the date set for the board election;

(2) on a form approved by the commissioner; and

(3) signed by at least 10 cotton growers who are eligible to vote in the board election.

(e) On receipt of an application and verification that the application meets the requirements of Subsection (d) of this section, an applicant's name shall be placed on the ballot for the board election.

(f) An eligible voter may vote for a cotton grower whose name does not appear on the official ballot by writing that person's name on the ballot.

(g) A board election must be preceded by at least 45 days notice published in one or more newspapers published and distributed in the proposed or established eradication zone. The notice shall be published not less than once a week for three consecutive weeks. Not later than the 45th day before the date of the election, direct written notice of the election shall be given to each county agent in the eradication zone.

(h) Each board member shall be sworn into office by a representative of the commissioner by taking the oath of office required for elected officers of the state.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1997, 75th Leg., ch. 463, Sec. 1.07, 2.02, eff. May 30, 1997.

Sec. 74.107. COMPOSITION OF BOARD. (a) The board shall be composed of members elected from each statutory eradication zone established and validated by referendum, members elected from each nonstatutory eradication zone established by referendum, members appointed by the commissioner from other cotton-growing areas of the state, and members appointed by the commissioner under Subsection (b). The commissioner shall appoint an initial board composed of 15 members. Except as provided by Subsection (b), the term of each board position may not exceed four years.

(b) In making appointments under this section, the commissioner shall appoint the following board members, selected from a variety of cotton-growing regions of the state, for four-year terms:

(1) an agricultural lender;

(2) an independent entomologist who is an integrated pest management specialist;

(3) two representatives from industries allied with cotton production; and

(4) a representative from the pest control industry.

(c) The commissioner may change the number of board positions or the eradication zone representation on the board to accommodate changes in the number of eradication zones. A change under this subsection may not contravene another provision of this subchapter.

(d) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

(e) On 30 days' notice and opportunity for hearing, the commissioner may replace any unelected board member of the foundation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.08, eff. May 30, 1997.

Sec. 74.108. POWERS OF BOARD AND COMMISSIONER. (a) The board may:

(1) conduct programs consistent with the declaration of policy stated in Section 74.101;

(2) accept, as necessary to implement this chapter, gifts and grants;

(3) borrow money, with the approval of the commissioner, as necessary to execute this chapter;

(4) take other action and exercise other authority as necessary to execute any act authorized by this subchapter or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(5) form an advisory committee composed of individuals from this state, other states, or other countries and change membership on the committee, as necessary. Any advisory committee created under this subdivision for the purpose of establishing treatment methods shall include among its members persons with knowledge of the effects of different treatments on the health of agricultural workers, the local population, and the ecosystem, including but not limited to the effects of a particular method of treatment on beneficial organisms and wildlife, the potential for secondary infestations from nontarget pests, and the potential for pest resistance to particular methods of treatment.

(b) On petition of 30 percent of the cotton growers eligible to vote within the proposed area, the commissioner may, or at the commissioner's discretion, the commissioner may, by rule add an area to an eradication zone or transfer an area or county from one statutory zone to another zone if:

(1) cotton production has begun or could begin in the area;

(2) the area is adjacent to an eradication zone or is in an area with biological characteristics similar to the eradication zone;

and

(3) the addition is approved in a referendum held in the area.

(c) The board must adopt a procurement policy, subject to approval by the commissioner, outlining the procedures to be used in purchasing.

(d) The commissioner at any time may inspect the books and other financial records of the foundation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.09, eff. May 30, 1997; Acts 1999, 76th Leg., ch. 286, Sec. 1, eff. May 29, 1999.

Sec. 74.109. BOARD DUTIES. (a) The board shall have an annual independent audit of the books, records of account, and minutes of proceedings maintained by the foundation prepared by an independent certified public accountant or a firm of independent certified public accountants. The audit shall include information for each zone in which an eradication program has been conducted under this subchapter. The audit shall be filed with the board, the commissioner, and the state auditor and shall be made available to the public by the foundation or the commissioner. The state auditor may examine any work papers from the independent audit or may audit the transactions of the foundation if the state auditor determines that an audit is necessary.

(b) Not later than the 45th day after the last day of the fiscal year, the board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the foundation during the fiscal year.

(c) The foundation shall provide fidelity bonds in amounts determined by the board for employees or agents who handle funds for the foundation.

(d) The foundation and the board are state agencies for the following purposes only:

(1) exemption from taxation including exemption from sales and use taxes, vehicle registration fees, and taxes under Chapter 152, Tax Code; and

(2) indemnification under Chapter 104, Civil Practice and

Remedies Code.

(e) Funds collected by the foundation are not state funds and are not required to be deposited in the state treasury. The foundation shall deposit all money collected under this subchapter in a bank or other depository approved by the commissioner.

(f) The foundation is a governmental unit under Section 101.001, Civil Practice and Remedies Code, and is entitled to governmental immunity. A tort claim against the foundation must be made under Chapter 101, Civil Practice and Remedies Code.

(g) The board shall collect data on the type and quantity of pesticides used in accordance with this subchapter. The data shall be filed with the commissioner.

(h) All revenue collected under this subchapter shall be used solely to finance programs approved by the commissioner as consistent with this subchapter.

(i) The foundation is subject to the requirements of:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the open records law, Chapter 552, Government Code.

(j) A board member may not vote on any matter in which the member has a direct pecuniary interest. A board member is subject to the same restrictions as a local public official under Chapter 171, Local Government Code.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.10, 2.03, eff. May 30, 1997.

Sec. 74.1095. ADMINISTRATIVE REVIEW. (a) The commissioner by rule shall establish procedures for the informal review and resolution of a claim arising out of certain acts taken by the foundation under this subchapter. Rules established under this section shall include a designation of the acts that are subject to review under this subsection and the appropriate remedial action, as authorized by this subchapter.

(b) A person dissatisfied with the department's informal resolution of a claim under procedures adopted under Subsection (a) may appeal the department's decision to the commissioner.

(c) A decision issued by the commissioner on a claim appealed

under Subsection (b) is the final administrative action of the department and is subject to judicial review under Chapter 2001, Government Code.

(d) This section does not constitute a waiver of the state's immunity from liability.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.11, eff. May 30, 1997.

Sec. 74.110. LIABILITY OF FOUNDATION MEMBERS, OFFICERS, AND EMPLOYEES. (a) Except for instances of gross negligence, individual criminal actions, or acts of dishonesty, the foundation's members, directors, officers, and employees are not individually liable to a cotton grower or other person for:

(1) errors in judgment;

(2) mistakes; or

(3) other acts or omissions.

(b) A foundation member, officer, or employee is not individually liable for an act or omission of another foundation member, officer, or employee.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.12, eff. May 30, 1997.

Sec. 74.1101. LIABILITY OF APPLICATORS. (a) In this section, "applicator" means an individual or other person that is not a member, director, officer, or employee of the foundation and that contracts with the foundation to apply pesticides or other chemicals using aircraft or other equipment to further or support the eradication or diapause efforts undertaken under this subchapter.

(b) An applicator is not jointly and severally liable for any act or omission of the foundation under this subchapter.

(c) The foundation shall have liability coverage in effect for any eradication or diapause efforts for which it uses applicators. The coverage shall apply to acts and omissions of the foundation and volunteers and be in the amount of at least $500,000 for each single occurrence of death, bodily injury, or property damage.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.13, eff. May 30, 1997.

Amended by Acts 1999, 76th Leg., ch. 286, Sec. 2, eff. May 29, 1999.

Sec. 74.1102. CONTRACTING. (a) For a purchase of goods and services under this chapter, the foundation may purchase goods and services that provide the best value for the foundation.

(b) In determining the best value for the foundation, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the foundation may consider other relevant factors, including:

(1) the quality and reliability of the goods and services;

(2) the delivery terms;

(3) indicators of probable vendor performance under the contract, including:

(A) past vendor performance;

(B) the vendor's financial resources and ability to perform;

(C) the vendor's experience or demonstrated capability and responsibility; and

(D) the vendor's ability to provide reliable maintenance agreements and support;

(4) the cost of any employee training associated with a purchase; and

(5) other factors relevant to determining the best value for the foundation in the context of a particular purchase.

Added by Acts 1999, 76th Leg., ch. 286, Sec. 3, eff. May 29, 1999.

Sec. 74.111. BOARD MEMBER COMPENSATION. Board members serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1997, 75th Leg., ch. 463, Sec. 2.04, eff. May 30, 1997.

Sec. 74.112. DISCONTINUATION OF PROGRAM AND FOUNDATION AND DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination by the foundation that the boll weevil eradication program has been

completed in all eradication zones established under this subchapter for boll weevil control and the pink bollworm eradication program has been completed in any eradication zone established under this chapter for pink bollworm control, the foundation shall provide notice of such completion to the commissioner along with a request for discontinuance of the eradication program and collection of the assessment. Any such request shall include documentation supporting the eradication of the boll weevil in all eradication zones established for boll weevil eradication or pink bollworm in any eradication zone established for pink bollworm eradication and a plan for discontinuance of the program and assessment.

(b) The commissioner shall determine whether or not the further elimination of the boll weevil or pink bollworm is necessary in the eradication zones and approve or disapprove discontinuance of the foundation and the plan for dissolution.

(c) On completion of dissolution, the foundation shall file a final report with the commissioner, including a financial report, and submit all remaining funds into the trust of the commissioner. Final books of the foundation shall be filed with the commissioner and are subject to audit by the department.

(d) The commissioner shall pay from the foundation's remaining funds all of the foundation's outstanding obligations.

(e) Funds remaining after payment under Subsection (d) of this section shall be returned to contributing cotton growers on a pro rata basis.

(f) If 30 percent or more of the cotton growers eligible to vote within a zone participating in the program present to the commissioner a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, the commissioner may conduct a referendum for that purpose if:

(1) the debt of the zone has been paid in full; and

(2) the foundation determines, and the commissioner approves the foundation's determination, that the cotton growers in the zone have paid more than one-half of the eradication program funds collected by the foundation and used for the eradication program in the zone from the date of the program's inception until the date the petition is presented to the commissioner.

(f-1) The commissioner may not conduct a referendum under Subsection (f) and shall return the petition if the commissioner determines that the requirements of Subsection (f)(1) or (2) are not

satisfied.

(g) The commissioner shall give notice of the referendum, the referendum shall be conducted, and the results shall be declared in the manner provided by law for the original referendum and election, with any necessary exceptions provided by rule of the commissioner.

(h) The commissioner shall conduct the referendum within 90 days of the date of filing of the petition, except that no such referendum may be held within two years of any other referendum in the eradication zone pertaining to establishing or discontinuing the eradication zone.

(i) Approval of the proposition is by the same vote as required in a referendum under Section 74.114(g). If the proposition is approved, the eradication program is abolished and the eradication zone ceases to exist on payment of all debts of the eradication zone.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.14, 2.05, eff. May 30, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 1, eff. June 14, 2013.

Sec. 74.113. ASSESSMENT REFERENDA. (a) The commissioner shall propose the assessment needed in each eradication zone to ensure the stability of the cotton industry by eradicating the public nuisance caused by the boll weevil and the pink bollworm.

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

(1) maximum assessment to be paid by cotton growers having production in the eradication zone; and

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

(c) With the commissioner's approval, the foundation may make an assessment in an eradication zone at a level less than the assessment approved by the referendum.

(d) The commissioner shall conduct an assessment referendum under the procedures provided by Section 74.114.

(e) If an assessment referendum is approved, the foundation may collect the assessment.

(f) An assessment levied on cotton growers in an eradication zone may be applied only to:

(1) eradication;

(2) the foundation's operating costs, including payments on debt incurred for a foundation activity; and

(3) the conducting of other programs consistent with the declaration of policy stated in Section 74.101.

(g) The assessment shall be adequate and necessary to achieve the goals of this subchapter. The amount of the assessment shall be determined by criteria established by the commissioner, including:

(1) the extent of infestation;

(2) the amount of acreage planted;

(3) historical efforts to eradicate;

(4) the growing season;

(5) epidemiology;

(6) historical weather conditions; and

(7) the costs and financing of the program.

(h) The commissioner shall give notice of and hold a public hearing within the eradication zone regarding the proposed assessment referendum. Before the referendum, the commissioner shall review and approve:

(1) the amount of the assessment;

(2) the basis for the assessment;

(3) the time for payment of the assessment;

(4) the method of allocation of the assessment among cotton growers;

(5) the restructuring and repayment schedule for any pre-existing debt; and

(6) the amount of debt to be incurred in the eradication zone.

(i) The commissioner shall on a zone-by-zone basis set the date on which assessments are due and payable.

(j) Each year, the commissioner shall review and approve the foundation's operating budget.

(k) The foundation may prepare and mail billing statements to each cotton grower subject to the assessment that state the amount due and the due date. The assessments shall be remitted to the foundation.

(l) With the approval of the board and the commissioner, the foundation may transfer the proceeds from the collection of assessments in one eradication zone to another eradication zone. The board shall consult with affected cotton grower steering committees

before recommending that the commissioner approve the transfer of proceeds under this subsection. The transferred proceeds may be applied only as provided by Subsection (f).

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.15, eff. May 30, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 4, eff. May 27, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 2, eff. June 14, 2013.

Sec. 74.1135. ALTERNATIVE METHOD OF ASSESSMENTS. (a) The commissioner may adopt rules that provide for an alternative method, manner, and mechanism by which assessments are imposed and collected under this subchapter. The commissioner may adopt the rules only after receiving a recommendation from the board. The board shall consult with cotton grower steering committees and the technical advisory committee in formulating a recommendation to the commissioner under this subsection. The commissioner may accept, reject, or modify a board recommendation. The rules apply notwithstanding Section 74.113. The rules must require any person collecting an assessment to forward the assessment to the foundation.
(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 577, Sec. 8, eff. June 14, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 5, eff. May 27, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 8, eff. June 14, 2013.

Sec. 74.114. CONDUCT OF BOARD ELECTIONS AND REFERENDA; BALLOTING. (a) The commissioner shall conduct a referendum or board election authorized under this subchapter. At the end of each four-year period in which an eradication program has been operational in a zone, the commissioner shall hold a referendum in the zone on the continuation of the eradication program. The referendum shall be

held at the same time as the election of a board member from the zone. Approval of the referendum on continuation is by a majority of those voting in the referendum.

(a-1) Notwithstanding Subsection (a), the commissioner may conduct only one referendum on continuation in each zone on or after September 1, 2005. The commissioner shall include on the ballot adequate notice of:

(1) the fact that a referendum on continuation is the final referendum on continuation for the zone in which it is held; and

(2) the existence of the petition provision in Section 74.112(f).

(b) The foundation shall bear all expenses incurred in conducting a referendum or board election.

(c) The commissioner shall adopt rules for voting in board elections and referenda to establish or continue eradication zones. Rules adopted under this subsection must include provisions for determining:

(1) who is a cotton grower eligible to vote in an election or referendum;

(2) whether a board member is elected by a plurality or a majority of the votes cast; and

(3) the area from which each board member is elected.

(d) A cotton grower having cotton production in a proposed or established eradication zone is entitled to:

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

(2) elect board members to represent the eradication zone.

(e) An eligible cotton grower may vote only once in a referendum or board election.

(f) Ballots in a referendum or board election shall be mailed directly to a central location, to be determined by the commissioner. A cotton grower eligible to vote in a referendum or board election who has not received a ballot from the commissioner, foundation, or another source shall be offered the option of requesting a ballot by mail or obtaining a ballot at the office of the county agent of the Texas Agricultural Extension Service or a government office distributing ballots in a county in the proposed or established zone in which the referendum or board election is conducted.

(g) A referendum is approved if:

(1) at least two-thirds of those voting vote in favor of

the referendum; or

(2) those voting in favor of the referendum farm more than 50 percent, as determined by the commissioner, of the cotton acreage in the relevant eradication zone.

(h) If a referendum under this subchapter is not approved, the commissioner may conduct another referendum. A referendum under this subsection may not be held before one year after the date on which the last referendum on the same issue was held.

(i) A public hearing regarding the proposed eradication program, including information regarding regulations to be promulgated by the commissioner, may be held by the commissioner in each of several locations within each boll weevil or pink bollworm eradication zone. The area posted for each hearing shall include no more than six contiguous counties that have cotton production at the time of the hearing.

(j) Individual voter information, including an individual's vote in a referendum or board election conducted under this section, is confidential and is not subject to disclosure under the open records law, Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.16, 2.06, eff. May 30, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 2, eff. September 1, 2005.

Sec. 74.115. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS. (a) A cotton grower who fails to pay an assessment levied under this subchapter when due may be subject, after reasonable notice and opportunity for hearing, to a penalty set by the commissioner. In determining the amount of the penalty to be assessed, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, and extent of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) the economic situation of the cotton grower; and

(5) any other matter that justice may require.

(b) The foundation may develop a compliance certificate program to manage the payment and collection of an assessment levied under this subchapter. Under the program the foundation, subject to department rules, may issue a compliance certificate for cotton for which an assessment has been paid.

(c) In addition to any other remedies for the collection of assessments and penalties, the commissioner may adopt rules relating to the compliance certificate program for eradication assessments. The rules may include:

(1) provisions establishing and relating to the obligations of growers, ginners, and buyers in due course of cotton produced in active eradication zones to ensure that assessments are paid within a prescribed time period;

(2) provisions allowing incentives in the form of discounted assessments for growers who pay assessments within a prescribed time period;

(3) provisions establishing penalties and interest against growers who pay assessments after a prescribed time period; and

(4) other provisions the commissioner may determine are proper.

(d) In addition to any other remedies for the collection of assessments and penalties, an assessment lien in favor of the foundation attaches and is perfected 60 days after the date the foundation mails notice of the assessment on cotton produced and harvested that year from the acreage that is subject to the assessment that is due and unpaid. An assessment lien is not an agricultural lien for the purposes of Chapter 9, Business & Commerce Code, and is not subject to the provisions of that chapter. An assessment lien is subject to and preempted by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated under that Act in the same manner as a security interest created by the seller. A buyer of cotton takes free of the assessment lien if the buyer:

(1) receives a compliance certificate issued by the foundation when the buyer purchases the cotton that certifies that the assessment has been paid to the foundation;

(2) pays for the cotton by a check on which the department is named as a joint payee;

(3) does not receive notice of the assessment lien as required by the Food Security Act of 1985 (7 U.S.C. Section 1631 et

seq.); or

(4) buys the cotton from a person other than the producer of the cotton.

(e) The foundation may assign, with the approval of the commissioner, assessments or liens in favor of the foundation as collateral for a loan to the foundation only if the proceeds of the loan are designated for use in the eradication zone from which the assessments or liens originated.

(f) If the department has cause to believe that a violation of this section or rules promulgated under this section has occurred, the department may investigate and, during normal business hours, audit and inspect the records of the person who is the subject of the investigation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.17, eff. May 30, 1997; Acts 1999, 76th Leg., ch. 286, Sec. 4, eff. May 29, 1999; Acts 2001, 77th Leg., ch. 168, Sec. 2, eff. May 18, 2001.

Sec. 74.116. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The commissioner by rule shall adopt criteria for exemption from payment of assessment penalties under Section 74.115 of this code a cotton grower for whom payment would impose an undue financial burden.

(b) A cotton grower may not qualify for an exemption under this section for a year in which the amount computed by subtracting the assessments and penalties due under this subchapter from the cotton grower's net income subject to federal income taxation in the previous year is greater than $15,000.

(c) A cotton grower who applies for an exemption under this section must use a form prescribed by the commissioner. A cotton grower must file a separate application form for each year for which the cotton grower claims an exemption.

(d) The commissioner may establish a payment plan for a cotton grower applying for an exemption under this section.

(e) The commissioner shall promptly notify an applicant of the determination regarding the applicant's request for an exemption.

(f) If an exemption under this section is denied, assessments and penalties for the year for which the application is made are due

on the later of:

(1) the date on which they would be due in the absence of an application for exemption; or

(2) 30 days after the date the applicant receives notice of the denial.

(g) In addition to the authority provided under Subsections (a)-(f), the commissioner may reduce or waive assessment penalties as appropriate and necessary.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.18, eff. May 30, 1997.

Sec. 74.117. ENTRY OF PREMISES; ERADICATION ACTIVITIES; INSPECTIONS. The department, the foundation, or a designated representative of either entity may enter cotton fields or other premises to carry out the purposes of this subchapter and Subchapters A and B of this chapter, which include the treatment and monitoring of growing cotton or other host plants. The department, the foundation, or a designated representative of either entity may inspect fields or premises in this state for the purpose of determining whether the property is infested with the boll weevil or the pink bollworm. An inspection must be conducted during reasonable daylight hours. The department shall give notice by publication of the planned schedule of dates for entry by the department, the foundation, or a designated representative of either entity, to the fields or premises to carry out the purposes of this subchapter, including treatment, monitoring, or inspection functions. The department shall publish notice of the planned schedule to enter the fields or premises in a newspaper of general circulation in the eradication zone not less than once a week for two weeks immediately before the scheduled dates of entry. In addition to the notice published by the department, the foundation shall post notice of the planned schedule to enter fields or premises to carry out the purposes of this subchapter at the county courthouse of each county in the eradication zone not less than 15 days before the planned dates of entry.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 13, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.19, eff. May 30, 1997.

Sec. 74.118. AUTHORITY TO PROHIBIT PLANTING OF COTTON AND REQUIRE PARTICIPATION IN ERADICATION PROGRAM. (a) The commissioner may adopt reasonable rules regarding areas where cotton may not be planted in an eradication zone if there is reason to believe planting will jeopardize the success of the program by making treatment impracticable or present a hazard to public health or safety.

(b) The commissioner may adopt rules relating to noncommercial cotton located in eradication zones and requiring that all growers of commercial cotton in an eradication zone participate in a boll weevil or pink bollworm eradication program that includes cost sharing as required by the rules.

(c) Notice of prohibitions and requirements shall be given by publication for one day each week for three successive weeks in a newspaper having general circulation in the affected area.

(d) The commissioner may adopt a reasonable schedule of penalty fees to be assessed against growers in a designated eradication zone who do not meet the requirements of the rules issued by the commissioner relating to reporting of acreage and participation in cost sharing. The penalty fees adopted may not exceed $50 per acre.

(e) If a grower fails to meet the requirements of rules adopted by the commissioner, the commissioner may order the destruction of cotton not in compliance with the rules. Costs incurred by the commissioner in the destruction of cotton may be assessed against the grower.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.07, eff. May 30, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 6, eff. May 27, 2009.

Sec. 74.119. AUTHORITY FOR DESTRUCTION OR TREATMENT OF COTTON IN ERADICATION ZONES; COMPENSATION PAYABLE. (a) The department shall destroy or treat hostable volunteer or other hostable noncommercial cotton and establish procedures for the purchase and

destruction of commercial cotton in eradication zones if the department determines the action is necessary to carry out the purposes of this subchapter. The department is not liable to the owner or lessee for the destruction of or injury to any cotton that was planted in an eradication zone after publication of notice as provided by this subchapter. The foundation is liable for the destruction of cotton if the cotton was planted in an eradication zone before publication of the notice.

(b) Not later than January 1, 2010, the department shall adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones. At a minimum, the rules must:

(1) provide a grower or landowner with a period of time in which the grower or owner is required to destroy hostable volunteer or other hostable noncommercial cotton on receipt of a notice from the department; and

(2) allow the department or a person designated by the department:

(A) to monitor and treat hostable volunteer or other hostable noncommercial cotton that is located in a crop field for boll weevil infestation if the grower or landowner does not destroy the cotton in compliance with the notice from the department; and

(B) to destroy hostable volunteer or other hostable noncommercial cotton that is not in a crop field, as provided by Section 74.004.

(c) If a grower or landowner does not destroy hostable volunteer or other hostable noncommercial cotton as required by Subsection (b)(1), the grower or owner shall pay to the department a volunteer cotton fee in an amount determined by the department. A fee under this subsection:

(1) may be assessed only on acreage where hostable volunteer or other hostable noncommercial cotton is located;

(2) may not be less than one-half the amount the grower or owner would owe if the entire acreage were planted with cotton; and

(3) shall be deposited to the credit of the hostable cotton fee account established by Section 74.0032.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1997, 75th Leg., ch. 463, Sec. 2.08, eff. May 30, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 7, eff. May 27, 2009.

Sec. 74.120. AUTHORITY TO ADOPT RULES. (a) The commissioner shall adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in an eradication zone on which cotton plants are being grown that have been or are being treated to eradicate the boll weevil or the pink bollworm.

(b) Rules adopted under this section shall establish the criteria by which the foundation develops its procedures and methods of treatment, which shall:

(1) establish a methodology for determining when boll weevil or pink bollworm population levels have reached economic significance;

(2) establish an effective treatment regimen that seeks to provide the least possible risk to workers, the public, and the environment;

(3) minimize the effects of the use of pesticides on long-term control methods, including but not limited to the effect a particular pesticide may have on biological controls;

(4) establish methods for monitoring boll weevils, pink bollworms, and secondary pests;

(5) establish methods for verifying pesticide use reduction; and

(6) consider the acute and chronic toxicity of particular pesticides and the quantity of particular pesticides needed. Eradication zone treatment plans may take into account the potential for the use of smaller quantities of more toxic substances to result in fewer health and environmental risks than larger quantities of less toxic substances.

(c) The commissioner may adopt other reasonable rules necessary to carry out the purposes of this subchapter and Subchapters A and B of this chapter. All rules issued under this subchapter must be adopted and published in accordance with state requirements.

(d) An advisory committee may be established to assist the commissioner in the development of rules adopted under this section. The advisory committee may be composed of:

(1) three cotton growers from different regions of the

state, appointed by the commissioner;

(2) three entomologists with knowledge of the principles of integrated pest management, at least one of whom has special knowledge of nonchemical or biological pest control, appointed by the commissioner;

(3) two individuals with experience representing the general interests of the environment, appointed by the chair of the Texas Natural Resource Conservation Commission;

(4) an environmental engineer with expert knowledge of ground and surface water protection from contamination, appointed by the chair of the Texas Natural Resource Conservation Commission;

(5) a toxicologist, appointed by the Commissioner of Health; and

(6) an individual with experience representing the general interests of consumers and an individual with experience representing the general interests of agricultural workers, appointed by the governor.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.02, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.20, 2.09, eff. May 30, 1997.

Sec. 74.121. REPORTS. Each person in an active eradication zone growing cotton in this state shall furnish to the foundation on forms supplied by the foundation information that the foundation requires concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown for ornamental or other purposes. The foundation may provide an incentive for early and timely reporting.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1997, 75th Leg., ch. 463, Sec. 1.21, eff. May 30, 1997.

Sec. 74.122. QUARANTINE. (a) The department may adopt rules relating to quarantining areas of this state that are infested with the boll weevil or the pink bollworm. The rules must address the storage of regulated articles and the movement of regulated articles

into and out of a quarantined area. The department may also adopt rules governing the movement of regulated articles from other states into this state if the articles are known to be infested with the boll weevil or the pink bollworm.

(b) The department shall adopt rules to prohibit the movement of cotton and regulated articles from an area infested with the boll weevil if the area is not participating in the boll weevil eradication program under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.10, eff. May 30, 1997. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 3, eff. June 14, 2013.

Sec. 74.123. DOCUMENTING REGULATED ARTICLES. To implement this subchapter, the department may issue or authorize issuance of:

(1) a certificate that indicates that a regulated article is not infested with the boll weevil or the pink bollworm; and

(2) a permit that provides for the movement of a regulated article to a restricted designation for limited handling, use, or processing.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.11, eff. May 30, 1997.

Sec. 74.124. COOPERATIVE PROGRAMS AUTHORIZED. (a) The foundation may carry out programs to destroy and eliminate the boll weevil and the pink bollworm in this state by cooperating through written agreements, as approved by the commissioner, with:

(1) an agency of the federal government;

(2) a state agency;

(3) an appropriate agency of a foreign country contiguous to the affected area to the extent allowed by federal law;

(4) a person who is engaged in growing, processing, marketing, or handling cotton;

(5) a group of persons in this state involved in similar

programs to carry out the purposes of this subchapter;

(6) an appropriate state agency of another state contiguous to the affected area, to the extent allowed by federal law, the law of the contiguous state, and the law of this state; or

(7) an appropriate association of cotton producers or boll weevil foundations in more than one state, for the purpose of facilitating cooperation with and funding assistance to this state to protect against reinfestation with the boll weevil.

(b) An agreement entered into under this section may provide for cost sharing and for division of duties and responsibilities under this subchapter and may include other provisions to carry out the purposes of this subchapter.

(c) Agreements under Subsections (a)(4)-(5) must be approved in each referendum required under this subchapter other than a referendum to discontinue an eradication program. The agreements must be approved by the same margin as required in the retention referendum.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.22, 2.12, eff. May 30, 1997; Acts 2001, 77th Leg., ch. 168, Sec. 3, eff. May 18, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 4, eff. June 14, 2013.

Sec. 74.125. ORGANIC COTTON GROWERS. (a) The commissioner shall develop rules and procedures to:

(1) protect the eligibility of organic cotton growers to be certified by the commissioner;

(2) ensure that organic and transitional certification by the commissioner continue to meet national certification standards in order for organic cotton to maintain international marketability; and

(3) in all events maintain the effectiveness of the boll weevil or pink bollworm eradication program administered under this subchapter.

(b) The board may not treat or require treatment of organic cotton fields with chemicals that are not approved for use on

certified organic cotton. Plow-up may be required as an alternative to chemicals. Rules adopted under Subsection (a) may provide indemnity for the organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or from any requirement of destruction of organic cotton. If time is reasonably available for the production of an economically feasible alternative crop, the board may require mitigation of losses with the production of an alternative crop.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.23, eff. May 30, 1997.

Sec. 74.126. PENALTIES. (a) A person who violates this subchapter or a rule adopted under this subchapter or who alters, forges, counterfeits, or uses without authority a certificate, permit, or other document issued under this subchapter or under a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

(c) If the commissioner determines that a violation of this subchapter or a rule adopted under this subchapter has occurred, the commissioner may request that the attorney general or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil, injunctive, and/or other appropriate relief.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.24, 2.13, eff. May 30, 1997.

Sec. 74.127. SUNSET PROVISION. (a) The board of directors of the official cotton growers' boll weevil eradication foundation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2021.

(b) The commissioner may order the dissolution of the foundation at any time the commissioner determines that the purposes of this subchapter have been fulfilled or that the foundation is

inoperative and abandoned. Dissolution shall be conducted in accordance with Section 74.112 of this code.

(c) If the foundation is abolished or the program discontinued for any reason, assessments approved, levied, or otherwise collectible on the date of abolishment remain valid as necessary to pay the financial obligations of the foundation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 21, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.14, eff. May 30, 1997; Acts 1997, 75th Leg., ch. 1169, Sec. 2.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1449, Sec. 3.02, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 3.03, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 2.03, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 8, eff. May 27, 2009.

Sec. 74.128. ANNUAL REPORT. The board shall issue to the commissioner and the appropriate oversight committee in the house of representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.25, eff. May 30, 1997.

Sec. 74.129. EXEMPTION FROM LAWSUITS, LIABILITY, TAXATION, AND LEGAL PROCESS. The legislature recognizes that the foundation, acting under the supervision and control of the commissioner, is carrying out an important governmental function and that therefore the foundation, as a quasi-governmental entity, must be immune from lawsuits and liability except to the extent provided in Chapter 101, Civil Practice and Remedies Code, and as provided by this section. Therefore, no claims may be brought or continued against the foundation except: (1) claims allowed by Chapter 101, Civil Practice and Remedies Code; and (2) claims pending against the foundation on April 30, 1997, plus attorney's fees and costs of court. With the exception of finally adjudicated claims arising from Chapter 101,

Civil Practice and Remedies Code, and claims for assessments, attorney's fees, and costs of court paid by named plaintiffs in lawsuits pending on or before April 30, 1997, all payments, contributions, funds, and assessments received or held by the foundation under this subchapter are exempt from garnishment, attachment, execution, or other seizure and from state and local taxation, levies, sales, and any other process and are unassignable. Nothing in this section shall affect or impair any existing or future indebtedness or any existing or future security interest created under a note, security agreement, assignment, or other loan agreement between the foundation and a lender or any judgment, to the extent such judgment allows recovery against the foundation pursuant to a note, security agreement, loan agreement, or other document.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.25, eff. May 30, 1997.

Sec. 74.130. USE OF BIO-INTENSIVE CONTROLS. (a) The commissioner shall develop and adopt rules to allow a cotton grower in an eradication program to use biological, botanical, or other non-synthetic pest control methods. In developing the rules, the commissioner shall consider:

(1) scientific studies and field trials of the effectiveness of a proposed alternative control method;

(2) the feasibility of using a proposed alternative control technique within a particular region;

(3) the degree of monitoring necessary to establish the success of the use of a proposed alternative control; and

(4) methods to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(b) A cotton grower that chooses to use an alternative method of control as provided in Subsection (a) shall notify the board. The board and the cotton grower shall coordinate their actions to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(c) The cotton grower shall pay any additional cost of bio-intensive control in addition to any assessment.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.25, eff. May 30, 1997.

Sec. 74.131. VENUE. (a) Venue for an action arising out of this subchapter in which the foundation is a party is in Travis County.

(b) This section does not expand the liability of the foundation beyond the liability provided under Section 74.129.

Added by Acts 1999, 76th Leg., ch. 286, Sec. 5, eff. May 29, 1999.

SUBCHAPTER E. COST-SHARING FOR BOLL WEEVIL ERADICATION

Sec. 74.151. DEFINITIONS. In this subchapter:

(1) "Boll weevil" and "pink bollworm" have the meanings assigned by Section 74.002.

(2) "Commissioner" has the meaning assigned by Section 74.102.

Added by Acts 1999, 76th Leg., ch. 127, Sec. 1, eff. May 20, 1999.

Sec. 74.152. CREATION OF COST-SHARING PROGRAM. As part of the program to eradicate the boll weevil and the pink bollworm under this chapter, a cost-sharing program is created to be administered under this chapter and rules adopted by the commissioner.

Added by Acts 1999, 76th Leg., ch. 127, Sec. 1, eff. May 20, 1999.

Sec. 74.153. COST-SHARING PROGRAM REQUIREMENTS. (a) The commissioner may contract to obtain boll weevil eradication services for the state with the entity named under Section 74.1011.

(b) The department may spend money under the cost-sharing program only in a zone in which:

(1) a boll weevil eradication project under this chapter is active; or

(2) boll weevil eradication has been declared complete by the United States Department of Agriculture or its designee.

Added by Acts 1999, 76th Leg., ch. 127, Sec. 1, eff. May 20, 1999.

SUBCHAPTER F. MAINTENANCE PROGRAM FOR BOLL WEEVIL AND PINK BOLLWORM ERADICATION

Sec. 74.201. DEFINITIONS. The definitions provided by Section 74.102 apply to this subchapter.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 3, eff. September 1, 2005.

Sec. 74.202. MAINTENANCE AREAS. (a) On the request of the foundation and affected cotton grower steering committees, the commissioner by rule may designate boll weevil and pink bollworm eradication maintenance areas for the continued protection of the cotton industry. To the extent practicable, and to the extent consistent with Subsection (b), maintenance areas must follow the lines of existing eradication zones. Contiguous eradication zones eligible for inclusion in a maintenance area may be included in the same maintenance area. Additional counties not previously included in an eradication zone may be added to maintenance areas to prevent reinfestation or otherwise support the eradication efforts of the state on request of the foundation, if the county is contiguous with a maintenance area.

(b) An eradication zone is eligible for inclusion in a maintenance area if:

(1) the commissioner determines that the boll weevil has been functionally eradicated in that zone;

(2) the zone has satisfied any debt owed to the foundation;

(3) the cotton grower steering committee has been consulted regarding the inclusion of the zone in a maintenance area; and

(4) the foundation requests the inclusion of the zone in a maintenance area.

(c) To the extent consistent with this subchapter, Subchapter D applies to the activities of the department and foundation under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 5, eff. June 14, 2013.

Sec. 74.203. MAINTENANCE FEES. (a) The commissioner by rule

may impose a maintenance fee on all cotton grown or on all cotton acres in a maintenance area.

(b) The maintenance fee must be collected on a per-acre or per-bale basis at a rate to be set by the commissioner after receiving a recommendation from the board. The board shall consult with cotton grower steering committees in formulating a recommendation to the commissioner under this subsection. The commissioner may accept, reject, or modify a board recommendation.

(c) The commissioner by rule may determine the method, manner, and mechanism by which maintenance fees are collected, including provisions for collection at central points in the cotton marketing process. The rules must provide for the fee collector to forward maintenance fees to the credit of the foundation.

(d) The amount of the maintenance fee must be based on:

(1) the number of cotton acres in a maintenance area;

(2) the potential for reinfestation from outside the maintenance area;

(3) the growing season;

(4) epidemiology;

(5) historical weather conditions;

(6) the expected costs of the maintenance program; and

(7) the need for an adequate reserve to respond to potential reinfestations in a rapid, effective manner.

(e) The department shall hold one or more hearings regarding the amount and collection methods of a maintenance fee to be imposed under this section.

(f) Maintenance fees collected under this section are not state funds.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 6, eff. June 14, 2013.

Sec. 74.2035. TRANSFER OF FUNDS BETWEEN ERADICATION ZONES AND MAINTENANCE AREAS. Notwithstanding any provision of this subchapter or Subchapter D, with the approval of the board and the commissioner, the foundation may transfer funds, including the proceeds from the

collection of assessments or maintenance fees, between active eradication zones and maintenance areas as needed to fulfill the purposes of this subchapter and Subchapter D. The board shall consult with affected cotton grower steering committees before recommending that the commissioner approve the transfer of funds under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 7, eff. June 14, 2013.

Sec. 74.204. RULES. The department may adopt rules necessary for the implementation and operation of a maintenance program under this subchapter, including rules limiting the balance of maintenance fees that the foundation may carry over from year to year in the foundation budget.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 3, eff. September 1, 2005.

CHAPTER 76. PESTICIDE AND HERBICIDE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. DEFINITIONS. In this chapter:

(1) "Active ingredient" means:

(A) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(B) in the case of a plant regulator, an ingredient that through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or the product of an ornamental or crop plant;

(C) in the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(D) in the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue.

(2) "Animal" means a vertebrate or invertebrate species, including man, other mammals, birds, fish, and shellfish.

(3) "Antidote" means a practical treatment used in preventing or lessening ill effects from poisoning, including first

aid.

(4) "Application of a herbicide" means the spreading of a herbicide on real property having a continuous boundary line.

(5) "Defoliant" means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Department" means the Department of Agriculture.

(7) "Desiccant" means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

(8) "Device" means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than man or a bacteria, virus, or other microorganism on or in living man or other living animals. The term does not include equipment sold separately from a pesticide.

(9) "Distribute" means offer for sale, hold for sale, sell, barter, or supply.

(10) "Environment" includes water, air, land, plants, man, and other animals living in or on water, air, or land, and the interrelationships that exist among them.

(11) "Equipment" means any type of ground, water, or aerial equipment or contrivance employing motorized, mechanical, or pressurized power and used to apply a pesticide to land or to anything that may be inhabiting or growing or stored on or in the land. The term does not include a pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance for which the person applying the pesticide is the source of power or energy used in making the pesticide application.

(12) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

(13) "Fungus" means a non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, or bacteria, but not including a non-chlorophyll-bearing thallophyte on or in living man or other living animals or on or in a processed food, beverage, or pharmaceutical.

(14) "Inert ingredient" means an ingredient that is not an active ingredient.

(15) "Insect" means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged

forms such as beetles, bugs, bees, and flies. The term includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(16) "Label" means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.

(17) "Labeling" means a label or any other written, printed, or graphic matter prepared by a registrant:

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides.

(18) "Land" means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation.

(19) "License use category" means a classification of pesticide use based on the subject, method, or place of pesticide application.

(20) "Nematode" means an invertebrate animal of the phylum Nemathelminthes and class Nematoda (an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle) inhabiting soil, water, plants, or plant parts.

(21) "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(22) "Plant regulator" means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant, but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.

(23) "Registrant" means a person who has registered a

pesticide under this chapter.

(24) "Regulatory agency" means a state agency with responsibility for certifying applicators under Subchapter E of this chapter.

(25) "Restricted-use pesticide" means a pesticide classified as a restricted-use pesticide by the Environmental Protection Agency.

(26) "Thallophyte" means a non-chlorophyll-bearing plant of a lower order than mosses and liverworts.

(27) "Weed" means any plant that grows where not wanted.

(28) "Worker protection standard" means the federal worker protection standard as found in the Code of Federal Regulations, 40 C.F.R. Parts 156 and 170.

Acts 1981, 67th Leg., p. 1188, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.002. PESTS. The department shall determine what organisms constitute pests for purposes of this chapter and may include in the list of pests:

(1) any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life; or

(2) any virus, bacteria, or other microorganism, other than a virus, bacteria, or other microorganism on or in living man or other living animals.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.003. STATE-LIMITED-USE PESTICIDES. (a) After notice and public hearing, the department may adopt lists of state-limited-use pesticides for the entire state or for a designated area within the state.

(b) A pesticide may be included on a list of state-limited-use pesticides if the department determines that, when used as directed or in accordance with widespread and commonly recognized practice,

the pesticide requires additional restrictions to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide. However, the department shall not place a pesticide on the state-limited-use list solely on the basis of actual damage or risk of damage to water quality without first obtaining approval from the Texas Natural Resource Conservation Commission based on the impact of the pesticide's use on water quality.

(c) The department shall formally request an opinion regarding impact on water quality from the Texas Natural Resource Conservation Commission during department consideration of any amendments to the current list of state-limited-use pesticides.

(d) At the direction of the Texas Natural Resource Conservation Commission in conjunction with its responsibilities pursuant to Chapter 26, Water Code, the department shall consider any formal request to add any pesticide to the state-limited-use list under Subsection (b), and the department shall issue regulations regarding the time, place, and conditions of such pesticide's use.

(e) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or used only:

(1) with permission of the department;

(2) under direct supervision of the department in certain areas under certain conditions; or

(3) in specified quantities and concentrations.

(f) The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 80, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.004. DEPARTMENT RULES. (a) The department may adopt rules for carrying out the provisions of this chapter, including rules providing for:

(1) the collection, examination, and reporting of records,

devices, and samples of pesticides;

(2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers;

(3) labeling requirements for pesticides and devices required to be registered under this chapter; and

(4) compliance with federal pesticide rules and regulations.

(b) Any rules adopted by the department for the purpose of protection or enhancement of water quality shall not be inconsistent with nor less stringent than rules adopted for the protection or enhancement of water quality by the Texas Natural Resource Conservation Commission pursuant to recommendations of the Texas Groundwater Protection Committee.

Acts 1981, 67th Leg., p. 1190, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 81, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.04, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.20, eff. September 1, 2009.

Sec. 76.006. PESTICIDE EXAMINATION AND TESTING. (a) The department may contract with a state college or university, state agency, or commercial laboratory for examination of a pesticide. The department shall let contracts with commercial laboratories under this subsection on the basis of competitive bidding.

(b) The department may make or provide for sample tests of a pesticide on request and may charge and collect a fee for the tests in an amount necessary to cover expenses incurred in making or providing for the tests.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.007. INTERAGENCY COOPERATION. (a) The department shall be the lead agency for pesticide regulation in Texas. In cooperation with the U.S. Environmental Protection Agency or any

federal agency responsible for implementation of federal pesticide law, the department shall:

(1) register pesticides for use in Texas;

(2) adopt lists of state-limited-use pesticides;

(3) provide for training, certification, and licensure of all classes of pesticide applicators;

(4) enforce pesticide laws and regulations governing the safe handling, use, storage, distribution, and disposal of pesticide products; and

(5) adopt rules to carry out the provisions of this chapter.

(b) The Texas Natural Resource Conservation Commission shall have principal authority to regulate and control water pollution. If the United States Environmental Protection Agency adopts a final rule requiring states to implement a state management plan for pesticides in groundwater, the department shall cooperate with the Texas Groundwater Protection Committee in the committee's development and implementation of federally mandated state management plans for pesticides in groundwater in accordance with Section 26.407, Water Code.

(c) The department shall seek advice from the Texas Natural Resource Conservation Commission, the Parks and Wildlife Department, the Texas Department of Health, and the Texas Agricultural Extension Service in reviewing applications for special local need or emergency pesticide registrations. The department shall act expeditiously to review any application for special local need or emergency pesticide registrations.

(d) The department shall give written notice to the Texas Natural Resource Conservation Commission whenever it has probable cause to believe that serious contamination of water has occurred as a result of use, misuse, manufacture, storage, or disposal of pesticides so that the Texas Natural Resource Conservation Commission may proceed with an investigation of a possible violation of the Water Code.

(1) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the commission shall seek the remedies provided by the Water Code.

(2) If the department determines that a violation of the Agriculture Code has occurred regarding the use, manufacture, storage, or disposal of pesticides, the department shall seek the

remedies provided by this code.

(3) The foregoing remedies shall not be mutually exclusive.

(e) The Texas Natural Resource Conservation Commission shall give written notice to the department whenever it has probable cause to believe that serious contamination of water has occurred as a result of the use, misuse, storage, disposal, or manufacture of pesticides so that the department may proceed with an investigation to determine if a violation of the Agriculture Code has occurred.

(1) If the department determines that a violation of the Agriculture Code has occurred, the department shall seek the remedies provided by this code.

(2) If the Texas Natural Resource Conservation Commission determines that a violation of the Water Code has occurred, the Texas Natural Resource Conservation Commission shall seek the remedies provided by the Water Code.

(3) The foregoing remedies shall not be mutually exclusive.

(f) The department shall consult with the Texas Department of Health before denying or canceling a pesticide registration because of a suspected public health threat. The department shall also coordinate enforcement efforts with the department of health when a serious public health threat is suspected.

(g) A regulatory agency may receive grants-in-aid from any federal agency and may enter into cooperative agreements with a federal agency, an agency of this state, a subdivision of this state, or an agency of another state for the purpose of obtaining assistance in the implementation of this chapter.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 79, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.05, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.008. EXEMPTION. Sections 76.007, 76.104-76.106, 76.108-76.117, 76.151(b), 76.151(c), 76.154(b), 76.155, 76.181, 76.182, 76.184, and 76.201(d)(1) do not apply to a person who is regulated by Chapter 1951, Occupations Code.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.751, eff. Sept. 1,

2003.

SUBCHAPTER B. LABELING

Sec. 76.021. LABELING INFORMATION. (a) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(1) the label information required by FIFRA, if the pesticide is subject to registration under that law; or

(2) the following information, if the pesticide is not subject to registration under FIFRA:

(A) the name, brand, or trademark under which the pesticide is distributed;

(B) the name and percentage of each active ingredient and the total percentage of inert ingredients;

(C) directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(D) if the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;

(E) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(F) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(G) a clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(b) The label bearing the ingredient statement under Subsection (a)(2)(B) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

Acts 1981, 67th Leg., p. 1191, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.022. CONSPICUOUS LETTERING. Any word, statement, or information required by this chapter to appear on a label or in labeling of a pesticide or device registered by the department shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary conditions of use.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.023. MISBRANDED PESTICIDE OR DEVICE. (a) A pesticide or device is misbranded if:

(1) it is subject to registration under FIFRA and it does not fully comply with the labeling requirements of the United States Environmental Protection Agency; or

(2) it is not subject to registration under FIFRA and:

(A) its labeling bears a statement, design, or graphic representation relating to the pesticide or device, or the ingredients of either, that is false or misleading in any particular;

(B) it is an imitation of or is distributed under the name of another pesticide or device; or

(C) it is not conspicuously labeled in accordance with Section 76.022 of this code.

(b) A pesticide is misbranded if:

(1) its labeling bears any reference to registration under this chapter, unless the reference is required by a rule adopted under this chapter;

(2) it does not bear a label as required by Section 76.021 of this code; or

(3) its label does not bear information as required by Section 76.021 of this code or a rule adopted under this chapter.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. REGISTRATION

Sec. 76.041. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b), (c), (d), or (e) of this section, before a pesticide is distributed in this state or is delivered for transportation or is transported in intrastate commerce or between points within this state through a point outside the state, it must be registered with the department. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(b) Registration is not required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under this chapter.

(c) Registration is not required for a pesticide that is not for use in this state and is being manufactured, transported, or distributed for use only outside of this state.

(d) Registration is not required for a chemical compound being used only to develop plot data as to the possible pesticidal action of the chemical.

(e) Unless otherwise required by department rule, registration is not required for a pesticide that is exempt from registration with the United States Environmental Protection Agency under federal law.

(f) The Texas Feed and Fertilizer Control Service may not register under Chapter 63 a fertilizer that contains a pesticide that must be registered with the department under this chapter unless the constituent pesticide is first registered with the department. The Texas Feed and Fertilizer Control Service shall consult with the department about the current registration status of a pesticide before registering any fertilizer mix containing that pesticide under Chapter 63. The department shall notify the Texas Feed and Fertilizer Control Service of any changes to a pesticide registration.

(g) A pesticide that has been registered with the department must continue to be registered as long as the pesticide remains in the channels of trade in this state. The registrant shall ensure that the pesticide continues to be registered.

(h) If the department issues a stop use, stop distribution, or removal order because the pesticide is not registered with the department, the registrant shall take any necessary action to remedy the situation, including reimbursing a person who is subject to the order for the person's costs in complying with the order.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 6.02, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.042. CONTENT OF REGISTRATION APPLICATION. (a) The application for registration of a pesticide shall include:

(1) the name and address of the applicant and the name and address of the person whose name will appear on the pesticide label, if not the applicant's;

(2) the name of the pesticide;

(3) a complete copy of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use and, if the pesticide is required to be registered with the United States Environmental Protection Agency, a copy of the Environmental Protection Agency stamped accepted labeling and any applicable comment pages;

(4) the use classification, whether for restricted or general use, as provided by the federal Insecticide, Fungicide, and Rodenticide Act, as amended, or by a rule adopted under that Act;

(5) the use classification proposed by the applicant, if the pesticide is not required by federal law to be registered under a use classification; and

(6) other information required by the department for determining the eligibility for registration.

(b) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(c) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under federal law or for which federal or state restrictions on use are being considered.

(d) A person located outside this state, as a condition to registration of a pesticide, shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the person may designate in writing the secretary of state as the recipient of service of process for the person in this state.

Acts 1981, 67th Leg., p. 1192, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.043. EXPIRATION AND RENEWAL. (a) Registration of a pesticide expires 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.

(b) A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal.

(c) A registration in effect on its expiration date for which a renewal application has been filed and renewal fee has been paid continues in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 6.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.044. FEES. (a) The department shall charge a fee, as provided by department rule, for each pesticide to be registered. The fee must be submitted with an application for registration or renewal of registration.

(b) A person who fails to apply for renewal of registration 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 for each brand to be renewed.

Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4284, ch. 682, Sec. 5, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 230, Sec. 83, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.08, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.35, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.045. REGISTRATION FOR SPECIAL LOCAL NEED. (a) The department may register a pesticide for additional uses and methods of application not covered by federal registration but not inconsistent with federal law, for the purpose of meeting a special local need.

(b) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of this subchapter.

Acts 1981, 67th Leg., p. 1193, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Agriculture Code Sec. 76.046 and amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.046. DENIAL OR CANCELLATION OF REGISTRATION. (a) If the department has reason to believe that any use of a registered pesticide is in violation of a provision of this chapter or is dangerous or harmful, the department shall determine whether a hearing shall be held under Section 12.032 on denial or cancellation of registration.

(b) The department shall issue written notice of a hearing under this section to the registrant of the pesticide. The notice must contain a statement of the time and place of the hearing. The hearing shall be held after the 10th day following the day on which the notice is issued.

(c) After opportunity at the hearing for presentation of evidence by interested parties, the department may deny or cancel the registration of the pesticide if the department finds that:

(1) use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(2) use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(3) even if properly used, the pesticide is detrimental to vegetation, except weeds, to domestic animals, or to public health and safety;

(4) a false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature; or

(5) the registrant has not complied or the pesticide does not comply with a requirement of this chapter or a rule adopted under

this chapter.

Acts 1981, 67th Leg., p. 1194, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 3.13, eff. Sept. 1, 1995. Renumbered from Agriculture Code Sec. 76.047 by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.047. EXPERIMENTAL USE PERMIT. (a) The department may issue an experimental use permit if the department determines that the applicant needs the permit in order to accumulate data necessary to register a pesticide under this chapter.

(b) A person may file an application for an experimental use permit before or after applying for registration.

(c) Use of a pesticide under an experimental use permit is under the supervision of the department and is subject to the terms and conditions, and valid for a period of time, prescribed by the department in the permit.

(d) The department may charge a fee for issuing a permit under this section in an amount equal to the amount charged for registration under Section 76.044(a).

(e) The department may revoke an experimental use permit at any time if the department finds that:

(1) the terms or conditions of the permit are being violated; or

(2) the terms and conditions of the permit are inadequate to avoid any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use of the pesticide.

Acts 1981, 67th Leg., p. 1194, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Agriculture Code Sec. 76.048 and amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. LICENSING OF DEALERS

Sec. 76.071. LICENSE REQUIRED. (a) A person may not distribute in this state a restricted-use or state-limited-use pesticide or regulated herbicide without a valid current pesticide dealer license issued by the department.

(b) Except as otherwise provided by this section, a pesticide

dealer must obtain a license for each location in the state that is used for distribution. If the person does not have a place of business in this state, the person may obtain one license for all out-of-state locations, but shall file as a condition to licensing a designation of an agent for service of process as provided by Section 76.042(d) of this code.

(c) A person must apply for a pesticide dealer license on forms prescribed by the department.

(d) A pesticide dealer may not distribute a restricted-use or state-limited-use pesticide or a regulated herbicide except to:

(1) a person licensed as a commercial applicator, noncommercial applicator, or private applicator;

(2) an individual working under the direct supervision of a licensed applicator;

(3) a certified private applicator;

(4) a licensed pesticide dealer; or

(5) a person who is licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners.

Acts 1981, 67th Leg., p. 1194, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.072. EXPIRATION. A pesticide dealer license expires on the second anniversary of the date of its granting or renewal unless the department by rule adopts a system under which licenses expire on specified dates during a year.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.073. FEES. (a) An application for a pesticide dealer license must be accompanied by a registration fee, as fixed by the department.

(b) A person who fails to apply for renewal of a pesticide dealer license 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 of this code.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 84, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.36, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.074. DISPLAY OF DEALER LICENSE. (a) Each dealer shall prominently display the pesticide dealer license in the dealer's place of business.

(b) Failure to display a license as required by this section is a ground for revocation of the license.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.075. RECORDS. (a) A person required to obtain a dealer's license by Section 76.071 shall record each distribution of a restricted-use or state-limited-use pesticide or regulated herbicide and shall maintain a copy of the record for at least two years after the date of the distribution.

(b) The department shall adopt rules that prescribe the information to be stated in the records required by this section.

(c) The department may require that a copy of the records required by this section be submitted periodically to the department.

(d) The department may revoke a dealer's license if the licensee fails to submit a copy of a record as required under Subsection (c) or makes false or fraudulent records, invoices, or reports.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.076. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department may deny an application for a dealer's license if the applicant fails to comply with this chapter. The department may revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has

been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation; or

(2) limit business to the areas prescribed by the department.

(c) If the department proposes to deny a person's application for a pesticide dealer license or to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1195, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 85, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.077. EXCEPTIONS. (a) This subchapter does not apply to a manufacturer or formulator of a pesticide who does not sell directly to the user.

(b) This subchapter does not apply to a licensed pesticide applicator who:

(1) distributes restricted-use or state-limited-use pesticides or regulated herbicides only as an integral part of the pesticide application business; and

(2) dispenses the pesticides only through equipment used in the pesticide application business.

(c) This subchapter does not apply to a federal, state, county, or municipal agency that provides pesticides only for its own programs.

Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. USE AND APPLICATION

Sec. 76.101. COORDINATION. (a) The department is the lead agency in the regulation of pesticide use and application and is responsible for coordinating activities of state agencies, except as provided by Section 76.007(b) of this code and by Chapter 26 of the Water Code. The department shall submit a state plan for the licensing of pesticide applicators to the administrator of the Environmental Protection Agency.

(b) The department shall coordinate, plan, and approve training programs and shall use the public and private resources of this state, including state universities, colleges, junior colleges, community colleges, the Texas Agricultural Extension Service, and the Texas Agricultural Experiment Station. The department and the Texas Agricultural Extension Service shall adopt a memorandum of understanding to jointly coordinate, plan, and approve the training programs for private applicators.

(c) The department shall make plans under this section on the basis of convenience to applicants, thoroughness of preparation and testing, and maximum economy in expenditures for this purpose. The department shall make full use of grants-in-aid and cooperative agreements in administering this subchapter.

(d)(1) Except as otherwise provided by this subsection, no city, town, county, or other political subdivision of this state shall adopt any ordinance, rule, or regulation regarding pesticide sale or use.

(2) Nothing in this subsection shall be construed to limit the authority of a city, town, or county to:

(A) encourage locally approved and provided educational material concerning a pesticide;

(B) zone for the sale or storage of such products;

(C) adopt fire or building regulations as preventative measures to protect the public and emergency services personnel from an accident or emergency involving such products, including regulations governing the storage of such products or governing fumigation and thermal insecticidal fogging operations;

(D) provide or designate sites for the disposal of such products;

(E) route hazardous materials; or

(F) regulate discharge to sanitary sewer systems.

(3) This subsection shall not prevent a city, town, county,

or any political subdivision from complying with any federal or state law or regulation. This subsection shall not prevent a city, town, county, or any political subdivision from attaining or maintaining compliance with federal or state environmental standards including Texas water quality standards. A city, town, county, or other political subdivision may take any action otherwise prohibited by this subsection in order to comply with any federal requirements, to avoid any federal or state penalties or fines, or to attain or maintain federal or state environmental standards including Texas water quality standards.

Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 86, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 96, Sec. 1, eff. May 7, 1993; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.102. AGENCIES RESPONSIBLE FOR LICENSING PESTICIDE APPLICATORS. The department shall license pesticide applicators involved in the following license use categories:

(1) agricultural pest control, including animal pest control;

(2) forest pest control;

(3) ornamental and turf pest control, except as provided by Chapter 1951, Occupations Code;

(4) seed treatments;

(5) right-of-way pest control;

(6) regulatory pest control;

(7) aquatic pest control;

(8) demonstration pest control;

(9) health-related pest control; and

(10) other license use categories as necessary to comply with federal requirements. The department may not adopt license use categories that are designated by statute for regulation by another agency.

Acts 1981, 67th Leg., p. 1196, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2589, ch. 693, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 87, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.752, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1278 (H.B. 1530), Sec. 1, eff. September 1, 2009.

Sec. 76.103. PROGRAM CONTINGENT ON FEDERAL FUNDS. (a) The licensing of commercial applicators, noncommercial applicators, and private applicators is contingent on the availability of federal funds to pay part of the costs of administering and enforcing the program.

(b) If federal funds and other funds made available for this program are not sufficient to pay all costs of administering and enforcing the program, the department shall certify that fact and discontinue the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.

(c) If sufficient funds become available after discontinuance, the department shall certify the availability of sufficient funds to pay all costs of administration and enforcement of the program and shall resume the licensing of commercial applicators, noncommercial applicators, and private applicators. The department shall publish notice of resumption of the program in the Texas Register.

(d) The department shall determine the effective date of discontinuance or resumption of the program, but the date may not be before the date of publication of notice in the Texas Register.

(e) During any period in which the program has been discontinued, a person is not required to have a license provided by this subchapter in order to use pesticides, but a person may be prosecuted for acts committed or omitted when the program was in effect.

Acts 1981, 67th Leg., p. 1197, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2589, ch. 693, Sec. 2, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 88, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.104. AGENCY RULES FOR APPLICATION OF A PESTICIDE. (a) The head of each regulatory agency may, after notice and public hearing, adopt rules to carry out the provisions of this subchapter

for which the agency is responsible.

(b) Rules adopted under this section may:

(1) prescribe methods to be used in the application of a restricted-use or state-limited-use pesticide or regulated herbicide;

(2) relate to the time, place, manner, method, amount, or concentration of pesticide application or to the materials used in pesticide application; and

(3) restrict or prohibit use of a restricted-use or state-limited-use pesticide or regulated herbicide in designated areas during specific periods of time.

(c) A regulatory agency may adopt a rule under this section only after consideration of precautions or restrictions necessary to prevent unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

(d) The department shall adopt worker protection standards for pesticides if there is no federal worker protection standard. The department may adopt other rules for the protection of the health, safety, and welfare of farm workers and pesticide handlers.

Acts 1981, 67th Leg., p. 1197, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.105. LICENSE REQUIRED. (a) Except as provided by Section 76.003(e), a person may not purchase or use a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is:

(1) licensed as a commercial applicator, noncommercial applicator, or private applicator and authorized by the license to purchase or use the restricted-use or state-limited-use pesticide or regulated herbicide in the license use categories covering the proposed pesticide use;

(2) an individual acting under the direct supervision of a licensed applicator, except as provided by Subsection (b) of this section and by Sections 76.003(e) and 76.116(f); or

(3) a certified private applicator as defined in Section 76.112(j) of this code.

(b) An individual is under the direct supervision of a licensed

applicator if the individual is acting under the instructions and control of a licensed applicator who is responsible for the actions of the individual and who is available if and when needed. A licensed applicator may not supervise an applicator whose license or certificate is under suspension or revocation. The licensed applicator is not required to be physically present at the time and place of the pesticide application unless the label of the applied pesticide states that the presence of the licensed applicator is required.

(c) A licensed applicator is responsible for assuring that the person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of pesticides. A licensed applicator satisfies the requirements of this subsection if the person working under the licensee's direct supervision has been trained as a handler under the federal worker protection standard.

(d) A person who is authorized under this chapter to use restricted-use or state-limited-use pesticides or regulated herbicides shall comply with all applicable federal and state rules, regulations, and court orders regarding the use of restricted-use or state-limited-use pesticides or regulated herbicides.

(e) Except as provided by Section 76.003(e), a person may not purchase a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is a licensed or a certified applicator or authorized by a licensed or certified applicator to purchase or take delivery for the applicator.

(f) The other provisions of this section notwithstanding, the department may adopt rules or establish programs that the U.S. Environmental Protection Agency or another federal agency requires as a condition for receiving:

(1) approval to authorize use of certain restricted-use or state-limited-use pesticides or regulated herbicides;

(2) federal funding for licensing or certification of pesticide applicators;

(3) federal funding for pesticide law enforcement efforts; or

(4) other federal funding related to pesticide risk reduction.

(g) The other provisions of this chapter notwithstanding, if the U.S. Environmental Protection Agency or another federal agency

imposes on the state standards for certification of commercial, noncommercial, or private pesticide applicators, the department may adopt by rule the federal standards for each classification of applicators for which the federal standards are imposed.

Acts 1981, 67th Leg., p. 1197, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2589, ch. 693, Sec. 3, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 89, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.106. CLASSIFICATION OF LICENSES. (a) The head of each regulatory agency may classify commercial applicator and noncommercial applicator licenses under subcategories of license use categories according to the subject, method, or place of pesticide application.

(b) A regulatory agency head shall establish separate testing requirements for licensing in each license use category for which the agency is responsible and may establish separate testing requirements for licensing in subcategories within a license use category.

(c) Each regulatory agency may charge a testing fee, as fixed by the head of the regulatory agency, for testing in each license use category.

Acts 1981, 67th Leg., p. 1198, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 64, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 90, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.37, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 766, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.107. LICENSING BY MORE THAN ONE AGENCY. (a) A person who wants to be licensed as a pesticide applicator under license use categories regulated by more than one regulatory agency may do so by paying a single license fee to the agency regulating the person's primary business and meeting licensing requirements for each category for which the person desires licensing.

(b) A person licensed under this section must pay testing fees required by each regulatory agency.

Acts 1981, 67th Leg., p. 1198, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 91, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.108. COMMERCIAL APPLICATOR LICENSE. (a) A person who operates a business or is an employee of a business that applies state-limited-use or restricted-use pesticides or regulated herbicides to the land of another person for hire or compensation and who is required to be licensed by Section 76.105 of this code shall apply to the appropriate regulatory agency for a commercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(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 an annual license fee, as fixed by the head of the agency.

(c) The head of a regulatory agency may not issue an original commercial applicator license before the applicant has passed an examination under Section 76.110 of this code.

(d) The head of a regulatory agency may not issue a commercial applicator license if it has been determined that:

(1) the applicant has been convicted of a felony involving moral turpitude in the last five years;

(2) the applicant has had a license issued under this subchapter revoked within the last two years;

(3) the applicant has been unable to satisfactorily fulfill licensing requirements; or

(4) the applicant for any other reason cannot be expected to be able to fulfill the provisions of this subchapter applicable to the license use category for which application is made.

(e) An individual to whom a commercial applicator license is issued is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the individual is licensed.

(f) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent

for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

Acts 1981, 67th Leg., p. 1198, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 4, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 239, Sec. 65, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 92, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.38, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.109. NONCOMMERCIAL APPLICATOR LICENSE. (a) A person who is required to be licensed under Section 76.105 of this code but who does not qualify as a commercial applicator or a private applicator shall apply to the appropriate regulatory agency for a noncommercial applicator license issued for the license use categories and subcategories in which the pesticide application is to be made.

(b) A person shall apply for an original or renewal noncommercial applicator license on forms prescribed by the regulatory agency. The applicant shall include with the application 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.

(c) The head of a regulatory agency may not issue an original noncommercial applicator license before the applicant has passed an examination under Section 76.110 of this code.

(d) An individual to whom a noncommercial applicator license is issued by the department is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the individual is licensed.

(e) If a license is issued in the name of a governmental entity, the entity must have a licensed applicator employed at all times. Failure to have a licensed applicator employed is a ground for revocation of a governmental entity noncommercial applicator

license.

(f) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the regulatory agency a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

(g) An individual to whom a noncommercial applicator license is issued by the Texas Department of Health is authorized to use and supervise the use of general-use, restricted-use, and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(h) Neither this section nor any other law shall prohibit a political subdivision from reducing the number of hours of training or other requirements for an employee conducting larval mosquito control on property owned or controlled by the political subdivision using biological pesticides approved for general use by the Texas Department of Health, provided the employee is given instructions adequate to ensure the safe and effective use of such pesticides.

Acts 1981, 67th Leg., p. 1199, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 5, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 239, Sec. 66, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 93, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.39, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 766, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 884, Sec. 1, eff. June 20, 2003.

Sec. 76.110. COMMERCIAL AND NONCOMMERCIAL APPLICATOR EXAMINATION; RECIPROCAL AGREEMENTS. (a) Each person applying for a license as a commercial applicator or a noncommercial applicator must pass an examination demonstrating that the person:

(1) is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and

(2) has knowledge of the use and effects of restricted-use

and state-limited-use pesticides or regulated herbicides in the license use categories and subcategories in which the person is to be licensed.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this section, the appropriate regulatory agency shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the appropriate regulatory agency shall notify examinees of the results of the examination not later than the 14th day after the date on which the appropriate regulatory agency receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the appropriate regulatory agency shall notify the examinee of the reason for the delay before the 90th day. The appropriate regulatory agency may require a testing service to notify examinees of the results of an examination.

(c) If requested in writing by the person who fails a licensing examination administered under this section, the appropriate regulatory agency shall furnish the person with an analysis of the person's performance on the examination.

(d) The appropriate regulatory agency may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

Acts 1981, 67th Leg., p. 1199, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 94, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 1.20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.111. APPLICATOR BUSINESSES; PROOF OF FINANCIAL RESPONSIBILITY. (a) In this section:

(1) "Applicator business" means a person who applies a state-limited-use or restricted-use pesticide or regulated herbicide to the land of another for compensation and who:

(A) is a licensed commercial applicator; or

(B) employs at least one licensed commercial

applicator.

(2) "M-44 device" means a nonexplosive, spring-operated mechanical device designed to deliver a capsule of sodium cyanide into the mouth of the target animal as a method of livestock predation control.

(b) This section does not apply to an employee or agent of an applicator business.

(c) Except as otherwise provided by this section, each applicator business shall file with the regulatory agency issuing the license a liability insurance policy, certification of a policy, or other proof of financial responsibility considered acceptable by the department protecting persons who may suffer damages as a result of the operations of the applicator business, its employees, and its agents.

(d) The proof of financial responsibility required by this section is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicator business, its employees, or its agents.

(e) Except as otherwise provided by this section, the amount of the proof of financial responsibility may not be less than $100,000 for each occurrence for property damage and may not be less than $100,000 for each occurrence for bodily injury or a general aggregate at a minimum of $200,000 for each occurrence. The head of a regulatory agency by rule may require different amounts of coverage for different classifications of operations under this chapter. Each commercial M-44 applicator license applicant must provide proof of financial responsibility acceptable to the department for bodily injury and property damage coverage insuring the applicator against liability for damage to persons or property occurring as a result of operations performed in the course of the application to premises or any other property under the applicator's care, custody, or control. The department will strive to set minimum acceptable coverage at an amount that is economically feasible to applicants. The coverage must at all times be maintained at not less than the amount set by the agency head or the Texas Department of Insurance.

(f) The head of a regulatory agency may accept a liability insurance policy in the proper sum which has a deductible clause in an amount of not more than $1,000 for the total amount of the liability insurance policy required by this section. If the applicator business has not satisfied the requirement of the

deductible amount in any prior legal claim, an agency head may not accept a policy with a deductible clause unless the applicator business furnishes the agency with a surety bond that satisfies the amount of the deductible clause as to all claims that may arise as a result of the operation of the applicator business.

(g) An applicator business shall cease state-limited-use or restricted-use pesticide or regulated herbicide application operations during a period in which the applicator business is unable to provide adequate proof of financial responsibility under Subsection (e).

Acts 1981, 67th Leg., p. 1200, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 6, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 223, Sec. 2, eff. May 28, 1987; Acts 1987, 70th Leg., ch. 630, Sec. 1, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 95, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 117, Sec. 1, 2, eff. Sept. 1, 1999.

Sec. 76.112. PRIVATE APPLICATOR. (a) A person is a private applicator if the person uses or supervises the use of a restricted-use or state-limited-use pesticide or regulated herbicide for the purpose of producing an agricultural commodity:

(1) on property owned or rented by the person or the person's employer or under the person's general control; or

(2) on the property of another person if applied without compensation other than the trading of personal services, or services related to agricultural production, including the use of equipment, between producers of agricultural commodities.

(b) A private applicator is required to be either licensed or certified to use restricted-use or state-limited-use pesticides or regulated herbicides.

(c) An employee qualifies as a private applicator under Subsection (a)(1) of this section only if he is employed to perform other duties related to agricultural production and provide labor for the pesticide application but does not provide the necessary equipment or pesticide.

(d) A private applicator who is required to be licensed by Section 76.105 of this code shall apply to the department for a

private applicator license.

(e) A person shall apply for an original or renewal private applicator license on forms prescribed by the department. The application shall include information as required by department rule and must be accompanied by a fee, as fixed by the department.

(f) The department may not issue an original private applicator license before the applicant has attended a training course conducted by the Texas Agricultural Extension Service or another training course approved by the department. The department shall approve appropriate training courses developed under the coordination of the Texas Agricultural Extension Service and to be conducted by other governmental agencies or nongovernmental entities. The training course shall cover the use, effects, and risks of restricted-use and state-limited-use pesticides or regulated herbicides.

(g) The department may not issue a private applicator license if the applicant has had a license issued under this subchapter revoked within the last two years.

(h) An individual to whom a private applicator license is issued is authorized to purchase, use, and supervise the use of restricted-use and state-limited-use pesticides or regulated herbicides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section.

(i) As a condition to issuance of a private applicator license, an applicant located outside this state shall file with the department a written instrument designating a resident agent for service of process in actions taken in administration and enforcement of this chapter. Instead of designating a resident agent, the applicant may designate in writing the secretary of state as the recipient of service of process for the applicant in this state.

(j) For purposes of this chapter, a certified private applicator is a private applicator who has been previously certified under the department's voluntary certification program and who holds a private applicator certificate dated prior to January 10, 1989. A certified private applicator is authorized to use restricted-use and state-limited-use pesticides or regulated herbicides in all license use categories and subcategories for the purpose of producing an agricultural commodity on property described by Subsection (a)(1) or (a)(2) of this section. A certified private applicator may not supervise the use of restricted-use and state-limited-use pesticides

or regulated herbicides.

Acts 1981, 67th Leg., p. 1200, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2590, ch. 693, Sec. 7, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 96, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.40, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.113. TERM AND RENEWAL OF LICENSES. (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.

(b) Each private applicator license is valid for five years.

(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.

(d) A licensee must undertake training, submit to retesting, or both, before renewal of a license if the head of the agency determines that additional knowledge is required for renewal.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 8, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 97, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 44 (H.B. 901), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.04, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.05, eff. September 1, 2009.

Sec. 76.114. RECORDS. (a) A regulatory agency shall require each commercial and noncommercial applicator licensee to maintain records of all pesticide applications. The department may require

each commercial or noncommercial applicator licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide or regulated herbicide and may require those records to be kept separate from other business records. The regulatory agency by rule shall prescribe the information to be entered into the records.

(b) Each private applicator shall maintain records of regulated herbicide and state-limited-use pesticide applications and shall maintain those records of restricted-use pesticide applications required by federal law.

(c) A licensee shall keep records required under this section for a period of two years from the date of the pesticide application. The licensee shall keep these records accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.

(d) On written request of the regulatory agency, a licensee shall furnish the department a copy of any requested record pertaining to the application of pesticides. The department may require all persons who apply a regulated herbicide to submit periodically to the department a copy of the records required by this section.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 98, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.115. INSPECTION OF EQUIPMENT. (a) Each regulatory agency may inspect equipment used in the application of a restricted-use or state-limited-use pesticide.

(b) A regulatory agency may require repairs or alterations of equipment before further use in the application of restricted-use or state-limited-use pesticides.

(c) The department by rule may:

(1) provide requirements for and inspect equipment used to apply regulated herbicides; and

(2) regulate or prohibit the use of certain equipment in the application of regulated herbicides if that use would be hazardous in an area of the state.

(d) Each piece of registered equipment shall be identified by a

license plate or decal furnished by a regulatory agency at no cost to the licensee. The license plate or decal must be attached to the equipment in a manner and location prescribed by the regulatory agency.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.116. SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSE. (a) The head of a regulatory agency that licensed or certified an applicator may suspend, modify, or revoke a license or certificate, assess an administrative penalty, place on probation a person whose license or certificate has been suspended, reprimand a licensee or certificate holder, or take a combination of those actions if the head of the agency finds that the licensee or certificate holder has:

(1) made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the Environmental Protection Agency;

(2) operated in a faulty, careless, or negligent manner;

(3) refused, or after notice, failed to comply with an applicable provision of this chapter, a rule adopted under this chapter, or a lawful order of the head of a regulatory agency by which the licensee is licensed;

(4) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required by this chapter;

(5) failed to maintain financial responsibility as required by this chapter;

(6) made false or fraudulent records, invoices, or reports;

(7) used fraud or misrepresentation in making an application for a license or renewal of a license; or

(8) aided or abetted a certified, licensed, or an unlicensed person to evade the provisions of this chapter, conspired with a certified, licensed, or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license or the certificate holder's certificate to be used by another person.

(b) A regulatory agency may temporarily suspend a license or certificate under this section for not more than 10 days after giving the licensee or certificate holder written notice of noncompliance.

(c) If a license or certificate suspension is probated, the regulatory agency may require the person to:

(1) report regularly to the agency on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the agency; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the agency in those areas that are the basis of the probation.

(d) Except for a temporary suspension under Subsection (b) of this section, if the regulatory agency, except for the department, proposes to not renew, suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing before a hearings officer designated by the agency. The agency shall prescribe procedures by which all decisions to not renew, suspend, modify, or revoke are appealable to the governing officer or board of the agency.

(e) Except for a temporary suspension under Subsection (b) of this section, if the department proposes to not renew, suspend, modify, or revoke a person's license or certificate, the person is entitled to a hearing conducted as provided under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

(f) An applicator whose license or certificate is under suspension or revocation by a regulatory agency may not apply restricted-use or state-limited-use pesticides or regulated herbicides under the direct supervision of another licensed applicator during that period of suspension or revocation.

Acts 1981, 67th Leg., p. 1201, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 99, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 3.15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.117. PROPERTY OWNER USE. This chapter does not prohibit a property owner from using in the property owner's house,

lawn, or garden a pesticide that is labeled for that use, other than a pesticide that may be registered or classified for use only by certified applicators.

Acts 1981, 67th Leg., p. 1202, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.118. EXEMPTION FOR LICENSED VETERINARIANS. The other provisions of this chapter notwithstanding, a person who is licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners and who is only using a restricted-use or state-limited-use pesticide or a regulated herbicide as a drug or medication during the course of the veterinarian's normal practice or as a private applicator may not be required to obtain a license under this chapter to purchase or use the restricted-use or state-limited-use pesticide or regulated herbicide.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.119. DISCLOSURE OF INFORMATION RELATING TO PRIVATE PESTICIDE APPLICATOR LICENSE HOLDERS. (a) In this section, "predator control device" means a device that incorporates an active ingredient and is used for the control of livestock predators.

(b) Except as provided by Subsection (c), a governmental entity in this state may not disclose:

(1) the name, address, or telephone number of a person who holds a private pesticide applicator license issued under this subchapter and is authorized to use a predator control device if disclosure of the person's name, address, or telephone number would reveal that the person:

(A) is authorized to use a predator control device;

(B) has used a predator control device; or

(C) has the intent to use a predator control device;

(2) the name, address, or telephone number of the owner or operator of land on which a predator control device has been used, is being used, or is intended to be used, if disclosure of the information would reveal that use or intended use; or

(3) information identifying the land on which a predator

control device has been used, is being used, or is intended to be used, if disclosure of the information would reveal the name, address, or telephone number of the owner or operator of the land.

(c) A governmental entity may disclose to the following the name, address, or telephone number of a person who holds a private pesticide applicator license issued under this subchapter, who is authorized to use a predator control device, and who either has used a predator control device or has the intent to use a predator control device:

(1) a person who holds a pesticide dealer license under Section 76.071 and is authorized to distribute predator control devices;

(2) another governmental entity in this state in connection with official business;

(3) the United States Environmental Protection Agency under a cooperative agreement entered into with that agency;

(4) any other agency of the United States that provides the governmental entity with an administrative or judicial subpoena for the information; or

(5) the appropriate agency or court in an administrative or judicial proceeding in which the private pesticide applicator license holder is a defendant.

(d) A governmental entity and the officers and employees of the governmental entity are immune from civil or criminal liability for an unintentional violation of this section.

Added by Acts 2003, 78th Leg., ch. 1059, Sec. 1, eff. June 20, 2003.

SUBCHAPTER F. STORAGE AND DISPOSAL

Sec. 76.131. RULES. (a) The department may adopt rules governing the storage and disposal of pesticides and pesticide containers for the purpose of:

(1) preventing injury from storage or disposal to man, vegetation, crops, or animals; and

(2) preventing any water pollution that is harmful to man or wildlife provided, however, that such rules be consistent with and not less stringent than Texas Natural Resource Conservation Commission rules adopted under Chapter 26 of the Water Code.

(b) A person may not store or dispose of a pesticide in

violation of a rule adopted by the department under this section.

(c) Applicators and other entities covered by this chapter who normally store products listed under the FIFRA in an amount that exceeds 55 gallons, 500 pounds, or a lesser amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter, within one-quarter mile of a residential area composed of three or more private dwellings for more than 72 hours, shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the name and telephone number of the applicator or a knowledgeable representative of the applicator or other entity storing the product who can be contacted for further information or contacted in case of emergency.

(d) On request, each applicator or entity shall provide to the fire chief having jurisdiction over the storage place a copy of a list of pesticides stored by the applicator or entity. The applicator or other entity shall notify the fire chief of any significant changes that occur relating to the stored pesticides if requested by the fire chief in writing.

(e) The fire chief having jurisdiction over the storage place or the fire chief's representative, on request, shall be permitted to conduct on-site inspections of the pesticides stored for the sole purpose of preparing fire department activities in case of an emergency.

(f) On request, the fire chief having jurisdiction over the storage place shall make the stored pesticide list available to members of the fire department having jurisdiction over the workplace and to personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the applicator.

Acts 1981, 67th Leg., p. 1202, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 100, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. HERBICIDES

Sec. 76.141. REGULATED HERBICIDES. (a) After a public hearing on the issue, and in accordance with Subsection (b), the department by rule may adopt a list of regulated herbicides for the state or for

one or more designated areas in the state.

(b) The department may include a herbicide on the list of regulated herbicides if the department determines that, if used as directed or in accordance with widespread and commonly recognized practice, the herbicide requires additional restrictions to prevent a hazard to desirable vegetation caused by drift or an uncontrolled application.

(c) A person may not distribute a regulated herbicide unless the person holds a dealer's license issued by the department.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.142. APPLICATION OF REGULATED HERBICIDE. (a) If a person applies a regulated herbicide, the person shall act in accordance with each applicable rule adopted by the department, including a rule adopted under this subchapter.

(b) If a regulated herbicide is applied by a commercial applicator, the person in control of the crop or land to which the regulated herbicide is applied and the commercial applicator are jointly responsible for ensuring that the application is in compliance with this chapter and each applicable rule adopted by the department.

(c) If the department finds that an application of a regulated herbicide is hazardous to crops or valuable plants in an area, the department may prohibit the application of a regulated herbicide in that area for any period during which the hazard exists.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.143. PUBLIC HEARING. As soon as practicable after receiving a written request for a revision of a rule, an exemption from a requirement of this chapter, or a prohibition of the spraying of a regulated herbicide in an area, the department may hold a public hearing to hear the request.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.144. COUNTY HERBICIDE REGULATIONS. (a) If the

commissioners court of a county determines that a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide exists in an area of the county and that a departmental rule adopted or prohibition prescribed under Section 76.141 or 76.142 not currently applicable to the area should apply to the area, the commissioners court may enter an order in the minutes of the court under which the department's rule or prohibition under Section 76.141 or 76.142 becomes effective in the specified area of the county beginning January 1 of the following year.

(b) If the commissioners court of a county determines that there is no longer a valuable crop or vegetation susceptible to being adversely affected by the application of a regulated herbicide in the specified area of the county, the court may rescind its order under Subsection (a) effective January 1 of the following year.

(c) The department shall adopt rules concerning the use of a regulated herbicide in a county in which the commissioners court has entered an order under Subsection (a) of this section.

(d) The department may immediately suspend a rule of the department regarding the application dates of a regulated herbicide in an area of a county if:

(1) the commissioners court of the county established the applicability of the rule by adopting an order as provided by Subsection (a);

(2) the commissioners court requests that the department immediately suspend the rule; and

(3) the department determines that an imminent threat to agricultural interests exists in the county and if that threat is not immediately addressed by a suspension of the department's rule a significant economic loss will result.

(e) Before the commissioners court of a county may enter an order under this section, the commissioners court shall hold a hearing to determine whether the order should be issued. Before the 10th day before the date on which the hearing is to be held, the commissioners court shall publish notice of the hearing in at least one newspaper in the county.

(f) The commissioners court shall transcribe the hearing and make findings of fact based on the hearing and conclusions of law to support its order in the manner prescribed for a final order or decision in a contested case under Chapter 2001, Government Code.

(g) Before the 21st day after the date on which an order under

Subsection (a) is entered, an interested person may appeal the order to a district court in the county to test the reasonableness of the basis for the commissioners court order. The provisions of Subchapter G, Chapter 2001, Government Code, that apply to the judicial review of a contested case under the substantial evidence rule apply to the appeal, except that the appeal is brought in a district court for the county in which the appealed order applies. An appeal may be taken from the district court as in other civil cases.

(h) The commissioners court of the county shall notify the department of a change in the status of a county or a portion of a county under this section.

Added by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. ENFORCEMENT

Sec. 76.151. ENTRY POWER. (a) The department, at any time and without notice during regular business hours, may:

(1) enter and inspect a building or place owned, controlled, or operated by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code; and

(2) inspect and review any record maintained by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code.

(a-1) The department may enter and inspect a building or place or inspect and review any record under Subsection (a) as necessary to:

(1) ensure compliance with this chapter or Chapter 1951, Occupations Code; or

(2) investigate a complaint made to the department.

(b) A regulatory agency is entitled to enter any public or private premises at reasonable times to:

(1) inspect any equipment authorized or required to be inspected under this chapter or to inspect the premises on which the equipment is kept or stored;

(2) inspect or sample land exposed or reported to be exposed to a pesticide;

(3) inspect an area where a pesticide is disposed of or stored; or

(4) observe the use and application of a restricted-use or state-limited-use pesticide or regulated herbicide.

(c) If a regulatory agency is denied access to any land to which access was sought at a reasonable time for any of the purposes listed in Subsection (b) of this section, the head of the regulatory agency may apply to a magistrate for a warrant authorizing access to the land for any of those purposes. On a showing of probable cause to believe that a violation of a rule relating to a purpose listed in Subsection (b) of this section has occurred, the magistrate shall issue the search warrant for the purposes requested.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.06, eff. September 1, 2009.

Sec. 76.152. SAMPLING. The department is entitled to take a sample for official analysis from any package or lot of pesticides found within this state.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.153. STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER. (a) If the department has reason to believe that a pesticide is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the use or distribution of the pesticide or requiring the pesticide to be removed and secured from further distribution. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not sell, distribute, or use the pesticide until the department determines that the pesticide:

(1) is in compliance with this chapter; or

(2) does not present a hazard to the public health, safety, or welfare.

(b) This section does not limit the right of the department to

proceed as authorized by another section of this chapter.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.154. INJUNCTION. (a) The department may sue in the name of the commissioner to enjoin any violation of a provision of this chapter. Venue is in the county in which the alleged violation occurred or is occurring.

(b) A regulatory agency may request an appropriate prosecuting attorney or the attorney general to sue to enjoin a violation or threatened violation of a provision of this chapter that is within the agency's responsibility.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 9, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.155. PROSECUTIONS. The department may request the appropriate prosecuting attorney to prosecute a violation of a provision of this chapter.

Acts 1981, 67th Leg., p. 1203, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 10, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.1555. ADMINISTRATIVE PENALTY. (a) If a person violates a provision of this chapter or Chapter 1951, Occupations Code, or a rule or order adopted by the department under this chapter or Chapter 1951, Occupations Code, the department may assess an administrative penalty against the person as provided by Section 12.020, except that the penalty for each violation may not exceed $5,000. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.

(b) The department shall establish a schedule stating the types of violations possible under this chapter. The department is not

required to comply with Subchapter B, Chapter 2001, Government Code, when establishing or revising the schedule. The department shall publish the initial schedule and any subsequent revision in the Texas Register before the schedule or revision is implemented.

(c) If the department elects to assess an administrative penalty, no action for a civil penalty may be based on the same violation or violations.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 101, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (58), (59), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.07, eff. September 1, 2009.

Sec. 76.156. CIVIL PENALTY. (a) A person who violates a provision of this chapter administered by a regulatory agency other than the department or a rule adopted by a regulatory agency other than the department under this chapter is liable for a civil penalty of not less than $50 nor more than $1,000 for each day on which the violation occurs.

(b) A person who violates a provision of this chapter administered by the department or a rule adopted by the department under this chapter is liable for a civil penalty of not less than $50 nor more than $10,000 for each violation, provided that the penalty shall not exceed $25,000 for all violations related to a single incident.

(c) No civil penalty may be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was or was not successful in collecting the administrative penalty.

(d) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a civil penalty provided by this section.

(e) The appropriate regulatory agency may request an appropriate prosecuting attorney or the attorney general to bring suit under this section.

(f) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

Added by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 11, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 102, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER I. REMEDIES

Sec. 76.181. APPEAL OF DENIAL OR CANCELLATION OF PESTICIDE REGISTRATION. A person whose application for registration of a pesticide has been denied or whose registration for a pesticide has been canceled may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.182. APPEAL OF PERMIT OR LICENSE DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION. A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, or private applicator license has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, noncommercial applicator license, private applicator license, or private applicator certificate has been suspended for more than 10 days, revoked, or modified may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, Sec. 103, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.183. APPEAL OF STOP USE, STOP DISTRIBUTION, OR REMOVAL ORDER. (a) The owner or custodian of a pesticide to which a stop use, stop distribution, or removal order is imposed under Section 76.153 may appeal the order to a court of competent jurisdiction in the county where the pesticide is found.

(b) Appeal under this section is by trial de novo.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.184. REPORTS OF PESTICIDE ADVERSE EFFECTS. (a) A person claiming adverse effects from an application of a pesticide may file with the appropriate regulatory agency a complaint report. The complaint report must contain the name of the person, if known, allegedly responsible for the application of the pesticide and the name of the owner or lessee of the land on which the pesticide was applied. The regulatory agency shall prepare a form printed in English and Spanish to be furnished to persons for use in filing complaint reports. The form may contain other information that is within the person's knowledge and requested by the head of the regulatory agency.

(b) As soon as practicable after receiving a complaint report, the regulatory agency shall notify the licensee, the owner or lessee of the land on which the alleged application occurred, and any other person who may be charged with responsibility for the adverse effects claimed. The regulatory agency shall furnish copies of the complaint to those people on request.

(c) To assess any adverse effects, the complaining party shall permit the regulatory agency and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been adversely affected.

(d) Failure to file a complaint does not bar a civil or

criminal action from being filed and maintained.

(e) The regulatory agency by rule may adopt procedures to be followed in the investigation of a report claiming adverse effects from an application of the pesticide.

Acts 1981, 67th Leg., p. 1204, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.185. DAMAGES RESULTING FROM APPLICATION OF PESTICIDE UNDER GOVERNMENT PROGRAM. Notwithstanding other law, the owner or lessee of land on which a pesticide is applied is not responsible for damages resulting from the application of the pesticide or subject to a criminal or civil penalty in connection with the application of the pesticide if:

(1) the pesticide is applied under a local, state, or federal government program that requires the application of the pesticide to the land; and

(2) the owner or lessee of the land on which the pesticide is applied does not control or have a right to control the time and manner of the application of the pesticide to the land.

Added by Acts 1995, 74th Leg., ch. 227, Sec. 23, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER J. PENALTIES

Sec. 76.201. OFFENSES. (a) A person commits an offense if the person distributes within this state or delivers for transportation or transports in intrastate commerce or between points within this state through a point outside this state, any of the following:

(1) a pesticide that has not been registered as provided by this chapter, except for a pesticide that is not for use in this state and is only being manufactured, transported, or distributed for use outside of this state;

(2) a pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(3) a pesticide that is not in the registrant's or

manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by Section 76.021 of this code;

(4) a pesticide:

(A) that is of strength or purity that falls below the professed standard or quality expressed on its labeling or under which it is sold;

(B) for which a substance has been substituted wholly or in part;

(C) of which a valuable constituent has been wholly or in part abstracted; or

(D) in which a contaminant is present in an amount that is determined by the department to be a hazard;

(5) a pesticide or device that is misbranded; or

(6) a pesticide in a container that is unsafe due to damage.

(b) A person commits an offense if the person:

(1) detaches, alters, defaces, or destroys, wholly or in part, any label or labeling provided for by this chapter or a rule adopted under this chapter before the container has been emptied and rinsed properly;

(2) adds any substance to or takes any substance from a pesticide in a manner that may defeat the purpose of this chapter or a rule adopted under this chapter;

(3) uses or causes to be used a pesticide contrary to its labeling or to a rule of the department limiting the use of the pesticide;

(4) handles, transports, stores, displays, or distributes a pesticide in a manner that violates a provision of this chapter or a rule adopted by the department under this chapter; or

(5) disposes of, discards, or stores a pesticide or pesticide container in a manner that the person knows or should know is likely to cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects.

(c) A person other than a person to whom the pesticide is registered commits an offense if the person uses for the person's advantage or reveals, other than to a properly designated state or federal official or employee, a physician, or in emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade

secrets, or commercial or financial information acquired under this chapter and marked as privileged or confidential by the registrant.

(d) A person commits an offense if the person:

(1) commits an act for which a certified applicator's license may be suspended, modified, revoked, or not renewed under Section 76.116 of this code; or

(2) violates any provision of this chapter to which this section does not expressly apply.

(e) A person commits an offense if the person:

(1) knowingly or intentionally uses, causes to be used, handles, stores, or disposes of a pesticide in a manner that causes injury to man, vegetation, crops, livestock, wildlife, or pollinating insects;

(2) violates Section 76.071(a);

(3) has a permit to apply a powder or dry-type regulated herbicide and applies a herbicide that does not meet the requirements of Section 76.144(c);

(4) violates a rule adopted under this chapter; or

(5) fails to keep or submit records in violation of this chapter.

Acts 1981, 67th Leg., p. 1205, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4864, ch. 857, Sec. 1, 2, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 230, Sec. 104, 105, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.202. PENALTY. (a) Except as provided by Subsection (b) of this section, an offense under Section 76.201 of this code is a Class C misdemeanor, unless the person has been previously convicted of an offense under that section, in which event the offense is a Class B misdemeanor.

(b) An offense under Section 76.201(e) of this code is a Class A misdemeanor, unless the person has been previously convicted of an offense under that subsection, in which event the offense is a felony of the third degree.

Acts 1981, 67th Leg., p. 1206, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2591, ch. 693, Sec. 12, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4865, ch. 857, Sec. 3, eff.

Sept. 1, 1983; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

Sec. 76.203. DEFENSES. (a) It is a defense to prosecution under this subchapter that the defendant:

(1) is a carrier who was lawfully engaged in transporting a pesticide or device within this state and who, on request, permitted the department to copy all records showing the transactions in and movement of the pesticide or device;

(2) is a public official of this state or the federal government who was engaged in the performance of an official duty in administering state or federal pesticide law or engaged in pesticide research;

(3) is the manufacturer or shipper of a pesticide that was for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides and the manufacturer or shipper held a valid experimental use permit as provided by this chapter; and

(4) manufactured or formulated a pesticide or device solely for export to a foreign country and prepared or packed the pesticide or device according to the specifications or directions of the purchaser.

(b) It is a defense to prosecution under Section 76.201(a)(3) of this code that the defendant is an applicator who, after acquiring an unbroken container, opened and transported the open container to and from application and storage sites as necessary.

(c) It is an affirmative defense to prosecution under Section 76.201(e) of this code that the defendant was using, causing to be used, handling, storing, or disposing of the pesticide in accordance with a label that complied with this chapter and rules adopted under this chapter.

Acts 1981, 67th Leg., p. 1206, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4865, ch. 857, Sec. 4, eff. Sept. 1, 1983; Acts 1997, 75th Leg., ch. 1369, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 77. FIRE ANT CONTROL

SUBCHAPTER A. ERADICATION PROGRAM

Sec. 77.001. COMMISSIONERS COURT MAY ESTABLISH PROGRAM. The commissioners court of any county may establish, implement, and conduct a program for the eradication or control of the imported fire ant.

Acts 1981, 67th Leg., p. 1207, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 628, Sec. 1, eff. Sept. 1, 1987.

Sec. 77.002. COORDINATION WITH OTHER PROGRAMS. The program established under this chapter may be conducted independently of or in conjunction with any related program conducted and financed by private or other public entities.

Acts 1981, 67th Leg., p. 1207, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 628, Sec. 1, eff. Sept. 1, 1987.

Sec. 77.003. COST OF PROGRAM. The commissioners court may expend any available county funds to pay for all or its share of the cost of a program established under this chapter, including funds derived from taxation under the 80-cent limitation of Article VIII, Section 9, of the Texas Constitution.

Acts 1981, 67th Leg., p. 1207, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 628, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. BASIC RESEARCH PROGRAM

Sec. 77.022. FIRE ANT BASIC RESEARCH PROGRAM. (a) The Fire Ant Research and Management Account Advisory Committee established under Section 88.215, Education Code, in the Texas Agricultural Experiment Station shall oversee a program to finance broadly based ant research that the advisory committee determines to be of the highest scientific merit and offers the greatest promise in providing new directions for long-term solutions to fire ant infestations.

(b) An award under the program described by Subsection (a) of this section shall be granted for a two-year period for individual or group projects, and may be extended after review by the advisory committee at the end of that period.

(c) The Texas Agricultural Experiment Station may accept gifts and grants from the federal government, state government, and private sources, as well as legislative appropriations. The use of gifts and grants other than legislative appropriations is subject, after their appropriation, only to limitations contained in the gift or grant.

(d) Except as provided by Subsection (c) of this section, awards under the program may be made from any gift, grant, or appropriation received.

(e) The Texas Agricultural Experiment Station shall make an annual accounting of all money received, awarded, and expended during the year to the legislative committees responsible for agricultural issues.

(f) The Texas Agricultural Experiment Station may adopt rules necessary for the implementation and administration of the award program.

(g) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(15), eff. Nov. 12, 1991.

Added by Acts 1987, 70th Leg., ch. 628, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(15), eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 218, Sec. 2, eff. May 23, 1995.

CHAPTER 78. NOXIOUS WEED CONTROL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 78.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "District" means a noxious weed control district.

Acts 1981, 67th Leg., p. 1209, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.002. LEGISLATIVE DETERMINATION. The legislature has determined that:

(1) noxious weeds are present in this state to a degree that poses a threat to agriculture and is deleterious to the proper use of soil and other natural resources; and

(2) reclamation of land from noxious weeds is a public right and duty in the interest of conservation and development of the natural resources of the state.

Acts 1981, 67th Leg., p. 1209, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.003. NOXIOUS WEED. For the purposes of this chapter, a weed or plant is considered to be a noxious weed if declared to be a noxious weed by:

(1) a law of this state; or

(2) the department acting under the authority of Chapter 61 of this code or any other law of this state.

Acts 1981, 67th Leg., p. 1209, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.004. ELIGIBILITY TO SIGN PETITION. In order to sign a petition under this chapter, a person must:

(1) hold title to land located in the district or proposed district;

(2) be 18 years of age or older; and

(3) reside in a county all or part of which is located in a district or proposed district.

Acts 1981, 67th Leg., p. 1209, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.005. ELIGIBILITY FOR VOTING. In order to vote in an election under this chapter, a person must:

(1) be a qualified voter;

(2) reside in the district or in the proposed district;

(3) own taxable property within the district; and

(4) have rendered the property to the county tax assessor for taxation as required by law.

Acts 1981, 67th Leg., p. 1209, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 78.011. PETITION FOR CREATION OF DISTRICT. (a) Landowners may petition a commissioners court for the creation of a noxious weed control district authorized under Article XVI, Section 59, of the Texas Constitution.

(b) The petition must contain:

(1) the signatures of 50 persons eligible to sign the petition or of a majority of the persons eligible to sign the petition, whichever is the lesser number;

(2) the name of the proposed district; and

(3) the boundaries of the proposed district.

(c) The petition may consist of more than one copy, and the signatures on each copy shall be added to determine if the total number of signatures required by this section have been obtained.

Acts 1981, 67th Leg., p. 1210, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.012. FILING PETITION. (a) The petition must be filed in the commissioners court of the county in which the largest part of the district is located.

(b) The person filing the petition shall deposit $500 in cash with the county clerk of the county in which the petition is filed.

Acts 1981, 67th Leg., p. 1210, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.013. DISTRICT BOUNDARIES; NAME. (a) A district may include:

(1) a political subdivision or a defined district of this state;

(2) one or more counties, or a portion of one or more counties;

(3) all or a portion of a town, village, or municipal corporation; or

(4) a body of land separated from the rest of the district.

(b) A district may not include:

(1) less than 32,000 acres;

(2) territory located in more than five counties;

(3) territory in more than one county, unless approved by the majority vote of eligible voters who reside in the territory in each county proposed to be included in the district; or

(4) land located in another district.

(c) A district must bear a name containing the words "noxious weed control district."

Acts 1981, 67th Leg., p. 1210, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.014. HEARING REQUIRED. After receiving a petition for the creation of a district, the commissioners court shall set a date for a hearing to determine if an election should be held to create a district. The hearing may be held at a regular or special session of the court.

Acts 1981, 67th Leg., p. 1210, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.015. NOTICE OF HEARING. (a) Except as provided by Subsection (b) of this section, the county clerk shall give notice of a hearing required by Section 78.014 of this code by publishing the notice two or more times, with an interval of seven or more days between the first and second publication, in a newspaper of general circulation in each county in which the proposed district will be located.

(b) If a county in which a proposed district will be located does not have a newspaper of general circulation, the county clerk shall give notice by posting the notice for two weeks or longer in four public places within the part of the county that is located in the proposed district.

(c) Notice required by this section must contain a statement of:

(1) the purpose of the hearing;

(2) the date, time, and place of the hearing; and

(3) the boundaries of the district, which may be defined by a general description that need not be a full legal description of the district.

Acts 1981, 67th Leg., p. 1210, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.016. HEARING. At a hearing required by Section 78.014 of this code, a person whose land is included in or may be affected by the proposed district may appear before the commissioners court and testify for or against the creation of the district. If the hearing lasts longer than one day, the commissioners court may adjourn the hearing to another day.

Acts 1981, 67th Leg., p. 1211, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.017. ACTION AFTER HEARING. At the conclusion of a hearing required under Section 78.014 of this code, the commissioners court may:

(1) on a determination that the proposed district will provide a public benefit to a substantial portion of the land within the district, grant the petition;

(2) on a determination that certain land in the district will not benefit from the creation of the district, redefine the proposed district to exclude that land and grant the petition; or

(3) on a determination that the proposed district will not offer a public benefit or benefit to a substantial portion of the land included in the proposed district, refuse the petition.

Acts 1981, 67th Leg., p. 1211, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.018. NOTICE OF ELECTION; ELECTION ORDERS. (a) After granting a petition under Section 78.017 of this code, the commissioners court shall order an election to be held to determine whether a district should be created.

(b) If the proposed district is located entirely in one county, the county clerk shall post the notice at the county's courthouse door and at four public places within the proposed district. If the proposed district is located in more than one county, the county clerk shall post the notice at each county's courthouse door and at four public places within the proposed district in each county.

(c) The county clerk shall post the notice before the 30th day prior to the date of the election.

(d) The notice must contain a statement of:

(1) the purpose of the election;

(2) the time of the election;

(3) the locations at which the election will be held; and

(4) the boundaries of the proposed district.

Acts 1981, 67th Leg., p. 1211, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.019. ELECTION. (a) Except as otherwise provided by

this section, the procedure for conducting an election must be in compliance with the election laws of this state.

(b) The commissioners court by order shall:

(1) create voting precincts in the proposed district;

(2) select a polling place or polling places within the precincts, taking into consideration the convenience of the voters; and

(3) appoint judges and other necessary election officers.

(c) Each eligible voter is entitled to vote at the election.

(d) Ballots for the election must be printed to provide for voting for or against the proposition: "Creating the district and making a uniform assessment of benefits not to exceed six cents per acre."

Acts 1981, 67th Leg., p. 1211, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.020. RETURNS; EFFECT OF ELECTION. (a) Immediately after the election, the election officers shall forward the results to the commissioners court. The commissioners court shall canvass the vote and enter an order declaring the result of the election.

(b) If the proposed district is located entirely in one county, the commissioners court shall issue an order declaring the creation of the district if the majority of votes cast in the county are for the proposition. If the proposed district is located in more than one county, the commissioners court shall issue an order declaring the creation of the district composed only of land in those counties in which a majority of votes are cast for the proposition.

(c) The commissioners court shall send a copy of the order to the county clerk of each county in which a portion of the district is located, and the county clerk shall file the order as a public record.

Acts 1981, 67th Leg., p. 1212, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.021. EXPENSE OF CREATING DISTRICT. (a) After the district is created, the county clerk shall:

(1) deduct from the fee deposited under Section 78.012 of this code an amount equal to expenses incurred by the commissioners court as a result of the creation of the district, including the

expense of the election; and

(2) after receiving a voucher signed by the county judge, refund the remainder of the fee to the chairman of the board of the district within 30 days after the day of the election of the chairman.

(b) The board shall refund to the petitioners out of the first money collected by the district the full amount of the fee required under Section 78.012 of this code.

(c) If the commissioners court denies a petition or if the result of an election is against the creation of the district, the county clerk shall:

(1) deduct from the fee deposited under Section 78.012 of this code an amount equal to expenses incurred by the commissioners court as a result of consideration of the formation of the proposed district, including the expense of any election held; and

(2) after receiving a voucher signed by the county judge, refund the remainder of the fee to the petitioners or their agent or attorney.

Acts 1981, 67th Leg., p. 1212, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. ADMINISTRATION

Sec. 78.031. BOARD OF DIRECTORS. (a) The board of directors of a noxious weed control district is composed of five persons, each of whom must:

(1) hold title to land located in the district;

(2) be 18 years of age or older; and

(3) reside in a county all or part of which is located in the district.

(b) Except as provided by Section 78.032 of this code, the term of office of a director is two years.

Acts 1981, 67th Leg., p. 1212, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.032. INITIAL BOARD OF DIRECTORS. (a) The commissioners court that ordered creation of the district shall appoint five eligible persons to serve as the first board of directors of the district.

(b) If the district is composed of land in more than one

county, the commissioners court shall appoint one director from each county within the district and fill any remaining vacancy by appointing a director from the district at large.

(c) Three of the directors of the first board shall serve from the date of their appointment until the first annual meeting of eligible voters, as authorized by Section 78.033 of this code, and the remaining two directors shall serve from the date of their appointment until the second annual meeting of eligible voters. The directors shall determine by lot which three directors shall serve until the first annual meeting and which two directors of the board shall serve until the second annual meeting.

Acts 1981, 67th Leg., p. 1213, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.033. ANNUAL MEETING. (a) The chairman of the board shall call an annual meeting of the eligible voters in the district to be held on the fourth Saturday of each April.

(b) The chairman shall give written notice of the time and place of the meeting not later than the 10th day before the day of the meeting to each eligible voter in the district, as shown by the county tax assessor-collector's records in each county in the district.

(c) At the meeting, the eligible voters shall:

(1) elect successors to directors whose terms are expiring during the year of the meeting; and

(2) consider other business the board determines is proper to consider.

(d) A director elected under Subsection (c)(1) of this section must reside in the same territory from which the predecessor was required to be selected.

(e) A person entitled to attend the meeting may appoint a proxy to represent him or her at the meeting.

Acts 1981, 67th Leg., p. 1213, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.034. COMPENSATION OF DIRECTORS. A director of the board is entitled to receive:

(1) $5 a day for attending a meeting of the board, not to exceed $60 a year; and

(2) 10 cents a mile for the distance the director actually travels between the director's residence and the place of a meeting of the board.

Acts 1981, 67th Leg., p. 1213, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.035. OFFICERS. The board shall annually elect a chairman and any officers it considers necessary. The board shall fill a vacancy in the chairmanship of the board or in an officer's position by appointing a director to fill the vacancy.

Acts 1981, 67th Leg., p. 1213, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.036. INSPECTORS AND CLERICAL EMPLOYEES. (a) The board may employ one or more persons to perform inspections under Section 78.044 of this code.

(b) The board may set the compensation of an inspector, and an inspector is entitled to reimbursement for actual and necessary expenses incurred in making an inspection.

(c) The board may employ necessary clerical personnel.

Acts 1981, 67th Leg., p. 1214, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. ENFORCEMENT

Sec. 78.041. GENERAL ENFORCEMENT POWERS OF BOARD. The board may:

(1) determine which noxious weeds are subject to control and what appropriate methods of control are to be used, including spraying, cutting, burning, tilling, or any other appropriate method;

(2) prescribe specific areas in the district in which control measures are to be used;

(3) prescribe the period during which control measures are to be used; and

(4) incur expenses and take other actions necessary to carry out the purposes of this chapter.

Acts 1981, 67th Leg., p. 1214, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.042. COMPLIANCE REQUIRED. (a) A person who holds title to or possesses land in the district shall comply with control measures prescribed by the board under this chapter.

(b) The commissioners court of a county located in the district shall comply with control measures prescribed by the board under this chapter for the purpose of controlling noxious weeds on rights-of-way of public roads and public land within the district.

Acts 1981, 67th Leg., p. 1214, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.043. NOTICE OF CONTROL MEASURES. The chairman of the board shall give written notice to each person who holds title to or possesses land located in the district of:

(1) the control measures in effect on the person's land; and

(2) information necessary to enable the person to carry out the measures.

Acts 1981, 67th Leg., p. 1214, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.044. INSPECTION; FAILURE TO COMPLY. (a) A director or an inspector appointed by the board may enter land in the district to determine if:

(1) control measures are necessary; or

(2) control measures prescribed by the board are being carried out.

(b) If the board determines that a person who holds title to or possesses land that is located in the district is failing to comply with prescribed control measures, the board in writing shall order compliance with the measures within a stated time.

(c) If a person fails to obey an order issued under Subsection (b) of this section, the board may sue in the district court of the county in which the land is located for a mandatory injunction ordering compliance. If the court issues the injunction, the person is liable for court costs and a reasonable attorney's fee, to be determined by the court.

Acts 1981, 67th Leg., p. 1214, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.045. EQUIPMENT CLEANING PROCEDURE. (a) The board may prescribe rules requiring the cleaning of and the disposal of materials cleaned from farm implements and machinery brought into the district or moved from one part of the district to another part.

(b) The board shall give notice of rules prescribed under this section by:

(1) posting a copy of the notice of the adoption of the rules at four public places in each county located in the district not later than the 11th day before the effective date of the rules; and

(2) filing a copy of the adoption of the rules with the county clerk of each county located in the district.

(c) A person commits an offense if the person fails to obey a rule prescribed under Subsection (a) of this section. An offense under this subsection is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1215, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 106, eff. Sept. 1, 1989.

SUBCHAPTER E. ASSESSMENTS AND APPROPRIATIONS

Sec. 78.051. ASSESSMENT. (a) The board may impose an annual uniform assessment on land within the district in order to pay the expenses of the district.

(b) The amount of the assessment may not exceed six cents an acre.

Acts 1981, 67th Leg., p. 1215, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.052. SPECIAL ELECTION ON INCREASED ASSESSMENT. (a) The commissioners court that ordered creation of an existing district with a maximum uniform assessment rate of less than six cents an acre may order an election to be held to determine whether or not the maximum uniform assessment rate should be raised to six cents an acre. The county clerk shall give notice in the manner provided by Section 78.018 of this code and the commissioners court shall conduct the election in the manner provided by Section 78.019 of this code.

(b) Ballots for the election must be printed to provide for voting for or against the proposition: "Increasing the maximum

assessment rate to six cents."

(c) Immediately after the election, the election officers shall forward the results to the commissioners court. The commissioners court shall canvass the vote and declare the result of the election.

(d) If the district is located entirely in one county, the commissioners court shall issue an order declaring the increase of the maximum uniform assessment to six cents an acre. If the district is located in more than one county, the commissioners court shall issue an order declaring the increase of the maximum rate of assessment to six cents an acre only in those counties where a majority of votes cast are for the proposition.

Acts 1981, 67th Leg., p. 1215, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.053. COLLECTION OF ASSESSMENT. (a) The board may assess and collect an assessment imposed under this chapter by:

(1) appointing an assessor-collector to perform the duties;

(2) contracting with the county tax assessor-collector to perform the duties; or

(3) appointing an assessor to make an assessment and contracting with a county tax assessor-collector to collect the assessment.

(b) If the board appoints an assessor-collector under Subsection (a)(1) of this section, the board may require the assessor-collector to give bond in an amount determined by the board. The board may compensate the assessor-collector in an amount not to exceed an amount equal to five percent of assessments collected.

(c) If the board contracts with a county tax assessor-collector under Subsection (a)(2) of this section, the assessor-collector may retain as fees of office five percent of all assessments collected.

(d) If the board appoints an assessor under Subsection (a)(3) of this section, the board may compensate the assessor in an amount not to exceed an amount equal to 2-1/2 percent of the assessments collected and the contracting county tax assessor-collector may retain 2-1/2 percent of the assessments collected.

Acts 1981, 67th Leg., p. 1215, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.054. DEPOSIT OF ASSESSMENT. The person collecting

assessments shall deposit the money collected into a district depository selected by the board.

Acts 1981, 67th Leg., p. 1216, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.055. REPORT TO COUNTY CLERK. (a) The chairman of the board shall file a report before September 1 of each year with the county clerk of each county in which the district is located.

(b) The report must contain:

(1) a statement of the total amount of money received by the board during the 12 months ending the last June 30;

(2) an itemized statement of the total amount of money expended by the board during the 12 months ending the last June 30; and

(3) a statement of the amount of money on hand on the last June 30.

Acts 1981, 67th Leg., p. 1216, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.056. REPORT TO DEPARTMENT. (a) Before September 1 of each year, the chairman of the board shall file a report with the department stating the amount of money received through the assessments by the district in the 12 months ending the last June 30.

(b) The department shall certify the amount stated in the report required by Subsection (a) of this section to the comptroller of public accounts.

Acts 1981, 67th Leg., p. 1216, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.057. APPROPRIATED FUNDS. (a) Except as provided by Subsection (b) of this section, if the legislature appropriates funds for the control of noxious weeds, the comptroller shall issue a warrant to each district in an amount equal to the amount certified for the district by the department under Section 78.056 of this code.

(b) If the legislature appropriates an amount for the control of noxious weeds that is less than the total of all amounts certified by the department under Section 78.056 of this code, the comptroller shall issue a warrant to each district in an amount that is equal to

that district's proportion of the total of funds certified under Section 78.056 of this code.

Acts 1981, 67th Leg., p. 1216, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. DISSOLUTION OF DISTRICT

Sec. 78.061. PETITION FOR DISSOLUTION. (a) The eligible voters residing in a district may petition the board to conduct an election on the dissolution of the district.

(b) The petition must contain the signatures of 50 eligible voters or of a majority of the eligible voters in the district, whichever is the lesser number.

Acts 1981, 67th Leg., p. 1217, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.062. ELECTION ORDER. (a) Before the 90th day after the day on which the board receives a petition for dissolution, the board shall order an election to determine whether the district should be dissolved.

(b) The chairman shall give notice of the election in the same manner as is required for publication of notice of a hearing under Section 78.015 of this code.

(c) Notice required by this section must contain a statement of:

(1) the purpose of the election; and

(2) the date, time, and place of the election.

Acts 1981, 67th Leg., p. 1217, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.063. DISSOLUTION ELECTION. (a) Except as otherwise provided by this section, the procedure for conducting a dissolution election shall be in compliance with the election laws of this state.

(b) The board shall:

(1) designate polling places in the district, taking into consideration the convenience of the voters; and

(2) appoint judges and the other necessary election officers.

(c) Each eligible voter is entitled to vote at the election.

Acts 1981, 67th Leg., p. 1217, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.064. RETURNS; EFFECT OF ELECTION. (a) After the election, the board shall:

(1) canvass the returns of the election; and

(2) enter an order declaring the result of the election.

(b) If a majority of votes are cast against the dissolution of the district, another election on the proposition may not be held within 12 months after the date of the election.

(c) If a majority of votes are cast for the dissolution of the district, the board shall enter an order declaring the district dissolved.

Acts 1981, 67th Leg., p. 1217, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 78.065. DISSOLUTION. (a) After a dissolution order has been issued, the board may not exercise any power except to terminate the affairs of the district.

(b) If at the time of dissolution the district does not have sufficient funds to pay claims against the district and if annual assessments already imposed are insufficient to pay the claims, the board may impose and collect further annual assessments in an amount necessary to pay the claims.

(c) If at the time of dissolution there are no claims against the district, the board shall pay any remaining funds to the treasuries of the counties located in the district. Each county shall deposit the funds received to the credit of the general fund of the county. The amount of the payment to each county must be in the same proportion as the area of the county is to the total area of the district.

Acts 1981, 67th Leg., p. 1217, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. ANNUAL REVIEW TO EXCLUDE LAND IN CROSBY COUNTY

Sec. 78.071. ANNUAL REVIEW. (a) The Commissioners Court of Crosby County shall establish a regular time once every calendar year to review petitions for excluding land from the district.

(b) The Commissioners Court of Crosby County shall publish

notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

(c) The notice shall advise all persons eligible to sign a petition under this chapter of their right to present petitions for exclusions and offer evidence in support of the petition and their right to contest any proposed exclusions based on either a petition or the court's own conclusions.

(d) A person eligible to sign a petition under this chapter within the district may file a petition with the commissioners court requesting that land be excluded from the district. A petition for exclusion shall be filed with the court at least 10 days before the date of the hearing and shall state clearly the reasons why the land will not benefit from inclusion in the district.

(e) After considering all evidence presented to it, if the commissioners court finds that the land described in a petition for exclusion does not benefit from inclusion in the district, the court shall declare the land excluded and shall redefine the boundaries of the district accordingly.

(f) The owner of the excluded land is not exempt from liability for any amounts due to the district prior to exclusion of the land.

(g) Land excluded from the district under this section may be included in the district at a later time after petition, notice, and hearing as provided in this section for exclusion of land from the district.

Acts 1981, 67th Leg., p. 1218, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 79. INTERSTATE PEST CONTROL COMPACT

Sec. 79.001. DEFINITIONS. In this chapter:

(1) "Compact" means the Interstate Pest Control Compact.

(2) "Executive head" as used in the compact, with reference to this state, means the governor.

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

Sec. 79.002. FILING OF BYLAWS. Under Article IV(h) of the

compact, copies of the bylaws adopted by the governing board and amendments to the bylaws must be filed with the commissioner.

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

Sec. 79.003. COMPACT ADMINISTRATOR. The commissioner is the compact administrator for this state.

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

Sec. 79.004. COOPERATION WITH PEST CONTROL INSURANCE FUND. Consistent with other law and using funds appropriated for the purpose, the state may cooperate with the insurance fund established by the compact.

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

Sec. 79.005. REQUEST FOR ASSISTANCE. The commissioner may request or apply for assistance from the insurance fund established by the compact, as provided by Article VI(b) or VIII(a) of the compact.

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

Sec. 79.006. DISPOSITION OF CERTAIN MONEY. A department or agency that expends or becomes liable for an expenditure due to a control or eradication program undertaken or intensified under the compact shall have credited to the department or agency account in the state treasury the amount of any payment made to the state to defray the cost of the program or to reimburse the state.

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

Sec. 79.007. EXECUTION OF INTERSTATE COMPACT. This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE PEST CONTROL COMPACT

"ARTICLE I. FINDINGS

"The party states find that:

(1) in the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase;

(2) because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them;

(3) the migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another to complement each other's activities when faced with conditions of infestation and reinfestation; and

(4) while every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

"ARTICLE II. DEFINITIONS

"As used in this Compact, unless the context clearly requires a different construction:

(1) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(2) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or

intensification of measures to control or eradicate one or more pests within one or more other states.

(3) "Responding state" means a state requested to undertake or intensify the measures to control or eradicate one or more pests.

(4) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(5) "Insurance Fund" means the Pest Control Insurance Fund established under this Compact.

(6) "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

(7) "Executive committee" means the committee established under Article V (e) of this compact.

"ARTICLE III. THE INSURANCE FUND

"There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

"ARTICLE IV. THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT

"(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

"(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

"(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

"(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

"(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

"(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

"(g) The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

"(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of

any amendment thereto with the appropriate agency or officer in each of the party states.

"(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

"(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

"ARTICLE V. COMPACT AND INSURANCE FUND ADMINISTRATION

"(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the Compact in his state; and

2. Represent his state on the Governing Board of the Insurance Fund.

"(b) If the laws of the United States specifically so provide, or if administrative provision is made therefore within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

"(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

"(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

"(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

"ARTICLE VI. ASSISTANCE AND REIMBURSEMENT

"(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

(1) The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.

(2) The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

"(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use

moneys available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

"(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

(1) A detailed statement of the circumstances which occasion the request for the invoking of the Compact.

(2) Evidence that the nest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

(3) A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefore, in connection with the eradication, control, or prevention of introduction of the pest concerned.

(4) Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

(5) A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

(6) Such other information as the Governing Board may require consistent with the provisions of this Compact.

"(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

"(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes

of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefore shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

"(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

"(g) Responding states required to undertake or increase measures pursuant to this Compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

"(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

"(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

"ARTICLE VII. ADVISORY AND TECHNICAL COMMITTEES

"The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations

upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

"ARTICLE VIII. RELATIONS WITH NONPARTY JURISDICTIONS

"(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

"(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

"(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

"ARTICLE IX. FINANCE

"(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the

Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

"(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

"(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of the claims.

"(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this Compact, provided that the Governing Board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

"(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

"(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

"ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL

"(a) This Compact shall enter into force when enacted into law by any five or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

"(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

"ARTICLE XI. CONSTRUCTION AND SEVERABILITY

"This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Added by Acts 2005, 79th Leg., Ch. 188 (H.B. 774), Sec. 1, eff. September 1, 2005.

CHAPTER 80. OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE MANAGEMENT CORPORATION

Sec. 80.001. FINDINGS AND DECLARATION OF POLICY. (a) The legislature finds that:

(1) citrus pests and diseases, including the insect known as the Asian citrus psyllid and the disease known as citrus greening, are public nuisances and menaces to the citrus industry, and their control and suppression is a public necessity;

(2) because of the natural migration patterns of citrus pests and the contagious nature of citrus diseases, the control and suppression of the nuisance can best be accomplished by dividing the commercial citrus-growing areas into separate zones so that integrated pest management programs may be developed for each zone;

(3) there is a need for a quasi-governmental entity acting under the supervision and control of the commissioner whose members are actual citrus producers who would be represented on the board of the entity by directors elected by them to manage control and suppression programs and to furnish expertise in the field of disease and insect control and suppression, because such an entity would enhance the interest and participation of citrus producers in the program;

(4) citrus producers, in partnership with the state and federal governments, have made significant investments toward the suppression of these pests and disease in this state; and

(5) it is essential to the well-being of the citrus industry and the agricultural economy of this state that the investments of the citrus producers and the state and federal governments be protected.

(b) It is the intent of the legislature that the program of control and suppression of citrus pests and diseases be carried out with the best available integrated pest management techniques.

(c) The department may recover costs for administration of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 1, eff. September 1, 2015.

Sec. 80.002. DESIGNATION OF ENTITY TO CARRY OUT CITRUS PEST AND DISEASE CONTROL AND SUPPRESSION. (a) The Texas Citrus Pest and Disease Management Corporation, Inc., a Texas nonprofit corporation, shall be recognized by the department as the entity to plan, carry out, and operate suppression programs to manage and control pests and diseases, including the Asian citrus psyllid and citrus greening, in citrus plants in the state under the supervision of the department as provided by this chapter.

(b) The commissioner may terminate the corporation's designation as the entity recognized to carry out citrus pest and disease control and management by giving 45 days' written notice to the corporation and by designating a successor entity. If the commissioner designates a successor to the corporation, the successor has all the powers and duties of the corporation under this chapter. Any successor to the corporation shall assume and shall be responsible for all obligations and liabilities relating to any notes, security agreements, assignments, loan agreements, and any other contracts or other documents entered into by the corporation with or for the benefit of any financial institution or its predecessor, successor, or assignee.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 2, eff. September 1, 2015.

Sec. 80.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Citrus Pest and Disease Management Corporation, Inc.

(2) "Asian citrus psyllid" means Diaphorina citri Kuwayama.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Citrus" means:

(A) a citrus plant;

(B) a part of a citrus plant, including trees, limbs, flowers, roots, and leaves; or

(C) citrus products.

(5) "Citrus greening" means the disease caused by the Asian citrus psyllid.

(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.

(7) "Suppression" means control of the numbers and migration of a pest to the extent that the commissioner does not consider further management of the pest necessary to prevent economic loss to citrus producers.

(8) "Pest management zone" means a geographic area designated by the commissioner in accordance with Section 80.005 in which citrus producers by referendum approve their participation in a citrus pest control program.

(9) "Corporation" means the Texas Citrus Pest and Disease Management Corporation, Inc., a Texas nonprofit corporation.

(10) "Host" means a plant or plant product in which a pest is capable of completing any portion of its life cycle.

(11) "Infested" means the presence of a pest in any life stage or the existence of generally accepted evidence from which it may be concluded with reasonable certainty that a pest is present.

(12) "Integrated pest management" means the coordinated use of pest and environmental information with available pest control methods, including pesticides, natural predator controls, cultural farming practices, and climatic conditions, to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment.

(13) "Regulated article" means an article carrying or capable of carrying a pest, including citrus plants, nursery plants, citrus rootstock, or other hosts.

(14) "Disease" means an impairment of the normal state of citrus, caused by a virus or organism, that interrupts or modifies the performance of vital functions in citrus. The term includes citrus greening.

(15) "Pest" means a virus or organism that causes disease

or other damage to citrus and that is designated by commissioner rule for suppression under this chapter. The term includes the Asian citrus psyllid.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 5.01, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 3, eff. September 1, 2015.

Sec. 80.004. ADVISORY COMMITTEES. (a) The commissioner may appoint an advisory committee for an existing pest management zone or an area of the state that is to be considered by the commissioner for designation as or inclusion in a pest management zone. The committee shall gather advice, input, and guidance from citrus producers from the area represented by the committee concerning the interest in and concerns about the implementation of this chapter.

(b) Each advisory committee may consider and make recommendations to the commissioner and the corporation concerning:

(1) the geographic boundaries for a proposed pest management zone;

(2) the amount of local interest in operating a suppression program;

(3) the basis and amount of an assessment necessary to support a suppression program;

(4) ongoing implementation of a suppression program approved by growers in a pest management zone; and

(5) any other matter requested by the commissioner or the corporation.

(c) Each advisory committee appointed under this section must include a sufficient number of citrus producers to ensure adequate representation across the pest management zone and other persons as determined by the commissioner.

(d) An advisory committee established under this section is subject to Chapters 551 and 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.005. CREATION OF PEST MANAGEMENT ZONES. (a) The commissioner by rule may designate an area of this state as a proposed pest management zone.

(b) The commissioner may hold a public hearing in the proposed pest management zone to discuss the proposed geographic boundaries of the zone. The public hearing may include any other topic allowed under this chapter.

(c) After the adoption of a rule under Subsection (a), the commissioner shall conduct a referendum under Section 80.006.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.006. PEST MANAGEMENT ZONE REFERENDA. (a) The commissioner shall conduct a referendum in each proposed pest management zone to determine whether citrus producers want to establish a pest management zone.

(b) Pest management zone referenda shall be conducted under the procedures provided by Section 80.016.

(c) A proposed pest management zone referendum ballot must include or be accompanied by information about the proposed pest management zone, including:

(1) a statement of the purpose of the pest suppression program;

(2) the geographic area included in the proposed pest management zone;

(3) a general summary of rules adopted by the commissioner under Sections 80.016, 80.020, and 80.022, including a description of:

(A) citrus producer responsibilities; and

(B) penalties for noncompliance with rules adopted under this chapter; and

(4) an address and toll-free telephone number that a citrus producer may use to request more information about the referendum or the pest suppression program.

(d) If a referendum to establish a pest management zone is not approved, the concurrent election of a board member from the proposed

pest management zone under Section 80.007 has no effect, and the commissioner shall appoint a representative to the board from the area.

(e) The corporation may request the commissioner to call additional referenda in a proposed pest management zone in which a referendum has not been approved. An additional pest management zone referendum and concurrent board election may not be held before the first anniversary of the date of the preceding referendum.

(f) After the approval of any referendum, the eligible voters shall be allowed, by subsequent referenda, to vote on whether to continue their assessments. The requirements for an initial referendum must be complied with in a subsequent referendum.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 4, eff. September 1, 2015.

Sec. 80.007. BOARD ELECTIONS. (a) The initial election for board members from a proposed pest management zone shall be held concurrently with a pest management zone referendum held under Section 80.006. Each pest management zone must be represented on the board and remain represented on the board until suppression operations are concluded and all debt of the pest management zone is paid.

(b) A board election shall be conducted under the procedures provided by this section and Section 80.016.

(c) A citrus producer who is eligible to vote in a referendum or election under this chapter is eligible to be a candidate for and member of the board if the person has at least seven years of experience as a citrus producer and otherwise meets the qualifications for the office.

(d) A citrus producer who wants to be a candidate for the board must meet the qualifications for board membership and file an application with the commissioner. The application must be:

(1) filed not later than the 30th day before the date set for the board election;

(2) on a form approved by the commissioner; and

(3) signed by at least 10 citrus producers who are eligible to vote in the board election.

(e) On receipt of an application and verification that the application meets the requirements of Subsection (d), an applicant's name shall be placed on the ballot for the board election.

(f) An eligible voter may vote for a citrus producer whose name does not appear on the official ballot by writing that person's name on the ballot.

(g) A board election must be preceded by at least 45 days' notice published in one or more newspapers published and distributed in the proposed or established pest management zone. The notice shall be published not less than once a week for three consecutive weeks. Not later than the 45th day before the date of the election, direct written notice of the election shall be given to each Texas AgriLife Extension Service agent in the pest management zone.

(h) Each board member shall be sworn into office by a representative of the commissioner by taking the oath of office required for elected officers of the state.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.008. COMPOSITION OF BOARD. (a) The board is composed of members elected from each pest management zone established by referendum, members appointed by the commissioner from other citrus-growing areas of the state, and members appointed by the commissioner under Subsection (b). The commissioner shall appoint an initial board composed of 15 members. Except as provided by Subsection (b), the term of each board position may not exceed four years.

(b) In making appointments under this section, the commissioner shall appoint the following board members, selected from a variety of citrus-growing regions of the state, for four-year terms:

(1) an agricultural lender;

(2) an independent entomologist who is an integrated pest management specialist;

(3) a representative from an industry allied with citrus production;

(4) a representative from the pest control industry; and

(5) a representative of the nursery or ornamental citrus

sales industry.

(c) The commissioner may change the number of board positions or the pest management zone representation on the board to accommodate changes in the number of pest management zones. A change under this subsection may not contravene another provision of this chapter.

(d) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

(e) On 30 days' notice and opportunity for hearing, the commissioner may replace any unelected board member of the corporation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 5, eff. September 1, 2015.

Sec. 80.009. POWERS OF BOARD AND COMMISSIONER. (a) The board may:

(1) conduct programs consistent with the declaration of policy stated in Section 80.001;

(2) accept, as necessary to implement this chapter, gifts and grants;

(3) borrow money, with the approval of the commissioner, as necessary to execute this chapter;

(4) take other action and exercise other authority as necessary to execute any act authorized by this chapter or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(5) form an advisory committee composed of individuals from this state, other states, or other countries and change membership on the committee, as necessary. Any advisory committee created under this subdivision for the purpose of establishing treatment methods shall include among its members persons with knowledge of the effects of different treatments on the health of agricultural workers, the local population, and the ecosystem, including but not limited to the effects of a particular method of treatment on beneficial organisms and wildlife, the potential for secondary infestations from nontarget

pests, and the potential for pest resistance to particular methods of treatment.

(b) On petition of at least 30 percent of the citrus producers eligible to vote in the proposed area, the commissioner may, or at the commissioner's discretion the commissioner by rule may, add an area to a pest management zone or transfer an area or county from one zone to another zone if:

(1) citrus production has begun or could begin in the area;

(2) the area is adjacent to a pest management zone or is in an area with biological characteristics similar to the pest management zone; and

(3) the addition is approved in a referendum held in the area.

(c) The board must adopt a procurement policy, subject to approval by the commissioner, outlining the procedures to be used in purchasing.

(d) The commissioner at any time may inspect the books and other financial records of the corporation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.010. BOARD DUTIES. (a) The board shall have an annual independent audit of the books, records of account, and minutes of proceedings maintained by the corporation prepared by an independent certified public accountant or a firm of independent certified public accountants. The audit must include information for each zone in which a suppression program has been conducted under this chapter. The audit shall be filed with the board, the commissioner, and the state auditor and be made available to the public by the corporation or the commissioner. The transactions of the corporation are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) Not later than the 45th day after the last day of the fiscal year, the board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the corporation during the fiscal year.

(c) The corporation shall provide fidelity bonds in amounts determined by the board for employees or agents who handle money for

the corporation.

(d) The corporation and the board are state agencies for the following purposes only:

(1) exemption from taxation, including exemption from sales and use taxes and taxes under Chapter 152, Tax Code; and

(2) exemption from vehicle registration fees.

(e) Funds collected by the corporation are not state funds and are not required to be deposited in the state treasury. The corporation shall deposit all money collected under this chapter in a bank or other depository approved by the commissioner.

(f) The board shall collect data on the type and quantity of pesticides used in accordance with this chapter. The data shall be filed with the commissioner.

(g) All money collected under this chapter shall be used solely to finance programs approved by the commissioner as consistent with this chapter.

(h) The corporation is subject to the requirements of:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the public information law, Chapter 552, Government Code.

(i) A board member may not vote on any matter in which the member has a direct pecuniary interest. A board member is subject to the same restrictions as a local public official under Chapter 171, Local Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.011. ADMINISTRATIVE REVIEW. (a) The commissioner by rule shall establish procedures for the informal review and resolution of a claim arising out of certain acts taken by the corporation under this chapter. Rules established under this section shall include a designation of the acts that are subject to review under this subsection and the appropriate remedial action, as authorized by this chapter.

(b) A person dissatisfied with the department's informal resolution of a claim under procedures adopted under Subsection (a) may appeal the department's decision to the commissioner.

(c) A decision issued by the commissioner on a claim appealed under Subsection (b) is the final administrative action of the department and is subject to judicial review under Chapter 2001, Government Code.

(d) This section does not constitute a waiver of the state's immunity from liability.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.012. CONTRACTING. (a) For a purchase of goods and services under this chapter, the corporation may purchase goods and services that provide the best value for the corporation.

(b) In determining the best value for the corporation, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the corporation may consider other relevant factors, including:

(1) the quality and reliability of the goods and services;

(2) the delivery terms;

(3) indicators of probable vendor performance under the contract, including:

(A) past vendor performance;

(B) the vendor's financial resources and ability to perform;

(C) the vendor's experience or demonstrated capability and responsibility; and

(D) the vendor's ability to provide reliable maintenance agreements and support;

(4) the cost of any employee training associated with a purchase; and

(5) other factors relevant to determining the best value for the corporation in the context of a particular purchase.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.013. BOARD MEMBER COMPENSATION. Board members serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.014. DISCONTINUATION OF PROGRAM AND CORPORATION AND DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination by the corporation that the pest suppression program has been completed in all pest management zones established under this chapter, the corporation shall provide notice of the completion to the commissioner along with a request for discontinuance of the control and suppression program and collection of the assessment. Any request under this subsection must include documentation supporting the fact that pests are no longer a threat to the state's citrus industry and a plan for discontinuance of the program and assessment.

(b) The commissioner shall determine whether or not the further suppression of pests is necessary in the pest management zones and approve or disapprove discontinuance of the corporation and the plan for dissolution.

(c) On completion of the dissolution, the corporation shall file a final report with the commissioner, including a financial report, and submit all remaining funds into the trust of the commissioner. Final books of the corporation shall be filed with the commissioner and are subject to audit by the department.

(d) The commissioner shall pay from the corporation's remaining funds all of the corporation's outstanding obligations.

(e) Funds remaining after payment under Subsection (d) shall be returned to contributing citrus producers on a pro rata basis.

(f) If 30 percent or more of the citrus producers eligible to vote within a zone participating in the program present to the commissioner a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, the commissioner shall conduct a referendum for that purpose.

(g) The commissioner shall give notice of the referendum, the referendum shall be conducted, and the results shall be declared in the manner provided by law for the original referendum and election, with any necessary exceptions provided by rule of the commissioner.

(h) The commissioner shall conduct the referendum before the 90th day after the date the petition was filed, except that a referendum may not be held before the second anniversary of any other referendum in the pest management zone pertaining to establishing or

discontinuing the pest management zone.

(i) Approval of the proposition requires the same vote as required in a referendum under Section 80.016(g). If the proposition is approved, the suppression program is abolished and the pest management zone ceases to exist on payment of all debts of the pest management zone.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 6, eff. September 1, 2015.

Sec. 80.015. ASSESSMENT REFERENDA. (a) The commissioner shall propose the assessment needed in each pest management zone to ensure the stability of the citrus industry by suppressing the public nuisance caused by pests.

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

(1) maximum assessment to be paid by citrus producers in the pest management zone; and

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

(c) With the commissioner's approval, the corporation may make an assessment in a pest management zone at a level less than the assessment approved by the referendum.

(d) The commissioner shall conduct an assessment referendum under the procedures provided by Section 80.016.

(e) If an assessment referendum is approved, the corporation may collect the assessment.

(f) An assessment levied on citrus producers in a pest management zone may be applied only to:

(1) pest control in that zone;

(2) the corporation's operating costs, including payments on debt incurred for a corporation activity, except that the funds of one zone may not be used to pay another zone's bank loans or debts; and

(3) the conducting of other programs consistent with the declaration of policy stated in Section 80.001.

(g) The assessment shall be adequate and necessary to achieve the goals of this chapter. The amount of the assessment shall be

determined by criteria established by the commissioner, including:

(1) the extent of infestation;

(2) the amount of acreage planted;

(3) historical efforts to suppress;

(4) the growing season;

(5) epidemiology;

(6) historical weather conditions; and

(7) the costs and financing of the program.

(h) The commissioner shall give notice of and hold a public hearing in the pest management zone regarding the proposed assessment referendum. Before the referendum, the commissioner shall review and approve:

(1) the amount of the assessment;

(2) the basis for the assessment;

(3) the time for payment of the assessment;

(4) the method of allocation of the assessment among citrus producers;

(5) the restructuring and repayment schedule for any preexisting debt; and

(6) the amount of debt to be incurred in the pest management zone.

(i) The commissioner shall on a zone-by-zone basis set the date on which assessments are due and payable.

(j) Each year, the commissioner shall review and approve the corporation's operating budget.

(k) The corporation shall prepare and mail billing statements to each citrus producer subject to the assessment that state the amount due and the due date. The assessments shall be sent to the corporation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 5.02, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 7, eff. September 1, 2015.

Sec. 80.016. CONDUCT OF BOARD ELECTIONS AND REFERENDA;

BALLOTING. (a) The commissioner shall conduct a referendum or board election authorized under this chapter.

(b) The corporation shall bear all expenses incurred in conducting a referendum or board election.

(c) The commissioner shall adopt rules for voting in board elections and referenda to establish pest management zones. Rules adopted under this subsection must include provisions for determining:

(1) who is a citrus producer eligible to vote in an election or referendum;

(2) whether a board member is elected by a plurality or a majority of the votes cast; and

(3) the area from which each board member is elected.

(d) A citrus producer 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.

(e) An eligible citrus producer may vote only once in a referendum or board election.

(f) Ballots in a referendum or board election shall be mailed directly to a central location, as determined by the commissioner. A citrus producer eligible to vote in a referendum or board election who has not received a ballot from the commissioner, corporation, or another source shall be offered the option of requesting a ballot by mail or obtaining a ballot at the office of the Texas AgriLife Extension Service or a government office distributing ballots in a county in the proposed or established zone in which the referendum or board election is conducted.

(g) A referendum is approved if:

(1) at least two-thirds of those voting vote in favor of the referendum; or

(2) those voting in favor of the referendum cultivate more than 50 percent, as determined by the commissioner, of the citrus acreage in the relevant pest management zone.

(h) If a referendum under this chapter is not approved, the commissioner may conduct another referendum. A referendum under this subsection may not be held before the first anniversary of the date on which the previous referendum on the same issue was held.

(i) A public hearing regarding the proposed suppression program, including information regarding regulations to be promulgated by the commissioner, may be held by the commissioner in each of several locations in each pest management zone.

(j) Individual voter information, including an individual's vote in a referendum or board election conducted under this section, is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 924 (H.B. 1494), Sec. 5.03, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 8, eff. September 1, 2015.

Sec. 80.017. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS. (a) A citrus producer who fails to pay an assessment levied under this chapter when due may be subject, after reasonable notice and opportunity for hearing, to a penalty set by the commissioner. In determining the amount of the penalty to be assessed, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, and extent of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) the economic situation of the citrus producer; and

(5) any other matter that justice may require.

(b) The corporation may develop a compliance certificate program to manage the payment and collection of an assessment levied under this chapter. Under the program the corporation, subject to department rules, may issue a compliance certificate for citrus for which an assessment has been paid.

(c) In addition to any other remedies for the collection of assessments and penalties, the commissioner may adopt rules relating to the compliance certificate program for suppression assessments. The rules may include:

(1) provisions establishing and relating to the obligations

of growers, packers, and buyers in due course of citrus produced in active pest management zones to ensure that assessments are paid within a prescribed time period;

(2) provisions allowing incentives in the form of discounted assessments for growers who pay assessments within a prescribed time period;

(3) provisions establishing penalties and interest against growers who pay assessments after a prescribed time period; and

(4) other provisions the commissioner determines are proper.

(d) In addition to any other remedies for the collection of assessments and penalties, an assessment lien in favor of the corporation attaches and is perfected 60 days after the date the corporation mails notice of the assessment on citrus produced and harvested that year from the acreage that is subject to the assessment that is due and unpaid. An assessment lien is not an agricultural lien for the purposes of Chapter 9, Business & Commerce Code, and is not subject to the provisions of that chapter. An assessment lien is subject to and preempted by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated under that Act in the same manner as a security interest created by the seller. A buyer of citrus takes free of the assessment lien if the buyer:

(1) receives a compliance certificate issued by the corporation when the buyer purchases the citrus that certifies that the assessment has been paid to the corporation;

(2) pays for the citrus by a check on which the department is named as a joint payee;

(3) does not receive notice of the assessment lien as required by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.); or

(4) buys the citrus from a person other than the producer of the citrus.

(e) The corporation may assign, with the approval of the commissioner, assessments or liens in favor of the corporation as collateral for a loan to the corporation only if the proceeds of the loan are designated for use in the pest management zone from which the assessments or liens originated.

(f) If the department believes that a violation of this section or a rule adopted under this section has occurred, the department may

investigate and, during normal business hours, audit and inspect the records of the person who is the subject of the investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.018. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The commissioner by rule shall adopt criteria to exempt from payment of an assessment penalty under Section 80.017 a citrus producer for whom payment would impose an undue financial burden.

(b) A citrus producer is not eligible for an exemption under this section for a year in which the amount computed by subtracting the assessments and penalties due under this chapter from the citrus producer's net income subject to federal income taxation in the previous year is greater than $15,000.

(c) A citrus producer who applies for an exemption under this section must use a form prescribed by the commissioner. A citrus producer must file a separate application form for each year for which the citrus producer claims an exemption.

(d) The commissioner may establish a payment plan for a citrus producer applying for an exemption under this section.

(e) The commissioner shall promptly notify an applicant of the determination regarding the applicant's request for an exemption.

(f) If an exemption under this section is denied, assessments and penalties for the year for which the application is made are due on the later of:

(1) the date on which they would be due in the absence of an application for exemption; or

(2) 30 days after the date the applicant receives notice of the denial.

(g) In addition to the authority provided under Subsections (a)-(f), the commissioner may reduce or waive an assessment penalty as appropriate and necessary.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.019. ENTRY OF PREMISES; SUPPRESSION ACTIVITIES; INSPECTIONS. The department, the corporation, or a designated

representative of either entity may enter citrus groves or other premises to carry out the purposes of this chapter, which include the treatment and monitoring of growing citrus or other host plants. The department, the corporation, or a designated representative of either entity may inspect groves or premises in this state for the purpose of determining whether the property is infested with pests. An inspection must be conducted during reasonable daylight hours. The department shall give notice by publication of the planned schedule of dates for entry by the department, the corporation, or a designated representative of either entity, to the owner or occupant of the groves or premises to carry out the purposes of this chapter, including treatment, monitoring, or inspection functions. The department shall publish notice of the planned schedule to enter the groves or premises in a newspaper of general circulation in the pest management zone not less than once a week for two weeks immediately before the scheduled dates of entry. In addition to the notice published by the department, the corporation shall post notice of the planned schedule to enter groves or premises to carry out the purposes of this chapter at the county courthouse of each county in the pest management zone not later than the 15th day before the planned dates of entry.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 9, eff. September 1, 2015.

Sec. 80.020. AUTHORITY TO PROHIBIT PLANTING OF CITRUS AND REQUIRE PARTICIPATION IN SUPPRESSION PROGRAM. (a) The commissioner may adopt reasonable rules regarding areas where citrus may not be planted in a pest management zone if there is reason to believe planting will jeopardize the success of the program or present a hazard to public health or safety.

(b) The commissioner may adopt rules requiring all growers of citrus in a pest management zone to participate in a pest suppression program and growers of commercial citrus to participate in pest and disease management programs that include cost sharing as required by the rules.

(c) Notice of a prohibition or requirement shall be given by publication for one day each week for three successive weeks in a newspaper having general circulation in the affected area.

(d) The commissioner may adopt a reasonable schedule of penalty fees to be assessed against growers in a designated pest management zone who do not meet the requirements of the rules issued by the commissioner relating to reporting of acreage and participation in cost sharing. A penalty fee may not exceed $50 per acre.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 10, eff. September 1, 2015.

Sec. 80.021. AUTHORITY FOR DESTRUCTION OR TREATMENT OF CITRUS IN PEST MANAGEMENT ZONES; COMPENSATION PAYABLE. The department may destroy or treat, and establish procedures for the purchase and destruction of, citrus plants or hosts in pest management zones if the department determines the action is necessary to carry out the purposes of this chapter. The department is not liable to the owner or lessee for the destruction of or injury to any citrus that was planted in a pest management zone after the date notice is published as required by this chapter. The corporation is liable for the destruction of citrus if the citrus was planted in a pest management zone before the date that notice is published.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.022. AUTHORITY TO ADOPT RULES. (a) The commissioner shall adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in a pest management zone on which citrus plants are being grown that have been or are being treated to control or suppress pests.

(b) Rules adopted under this section shall establish the criteria by which the corporation develops its procedures and methods of treatment, which shall:

(1) establish a methodology for determining when pest

population levels have reached economic significance or when disease is present;

(2) establish an effective treatment regimen that seeks to provide the least possible risk to workers, the public, and the environment;

(3) minimize the effects of the use of pesticides on long-term control methods, including but not limited to the effect a particular pesticide may have on biological controls;

(4) establish methods for monitoring pests;

(5) establish methods for verifying pesticide use reduction; and

(6) consider the acute and chronic toxicity of particular pesticides and the quantity of particular pesticides needed. Pest management zone treatment plans may take into account the potential for the use of smaller quantities of more toxic substances to result in fewer health and environmental risks than larger quantities of less toxic substances.

(c) The commissioner may adopt other reasonable rules necessary to carry out the purposes of this chapter. All rules issued under this chapter must be adopted and published in accordance with the laws of this state.

(d) An advisory committee may be established to assist the commissioner in the development of rules under this section. The advisory committee may be composed of:

(1) three citrus producers from the commercial citrus growing area of the state, appointed by the commissioner;

(2) three entomologists with knowledge of the principles of integrated pest management, at least one of whom has special knowledge of nonchemical or biological pest control, appointed by the commissioner;

(3) two individuals with experience representing the general interests of the environment, appointed by the chair of the Texas Commission on Environmental Quality;

(4) an environmental engineer with expert knowledge of ground and surface water protection from contamination, appointed by the chair of the Texas Commission on Environmental Quality; and

(5) a toxicologist, appointed by the commissioner of state health services.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01,

eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 11, eff. September 1, 2015.

Sec. 80.023. REPORTS. Each person in an active pest management zone growing citrus in this state shall furnish to the corporation on forms supplied by the corporation information that the corporation requires concerning the size and location of all commercial citrus orchards and of noncommercial citrus grown for ornamental or other purposes. The corporation may provide an incentive for early and timely reporting.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.024. DOCUMENTING REGULATED ARTICLES. To implement this chapter, the department may issue or authorize issuance of:

(1) a certificate that indicates that a regulated article is not infested with pests; and

(2) a permit that provides for the movement of a regulated article to a restricted destination for limited handling, use, or processing.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 12, eff. September 1, 2015.

Sec. 80.025. COOPERATIVE PROGRAMS AUTHORIZED. (a) The corporation may carry out programs to destroy and manage pests in this state by cooperating through written agreements, as approved by the commissioner, with:

(1) an agency of the federal government;

(2) a state agency;

(3) an appropriate agency of a foreign country contiguous to the affected area to the extent allowed by federal law;

(4) a person who is engaged in growing, processing, marketing, or handling citrus;

(5) a group of persons in this state involved in similar programs to carry out the purposes of this chapter; or

(6) an appropriate state agency of another state contiguous to the affected area, to the extent allowed by federal law, the law of the contiguous state, and the law of this state.

(b) An agreement entered into under this section may provide for cost sharing and for division of duties and responsibilities under this chapter and may include other provisions to carry out the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 13, eff. September 1, 2015.

Sec. 80.026. ORGANIC CITRUS PRODUCERS. (a) The commissioner shall develop rules and procedures to:

(1) protect the eligibility of organic citrus producers to be certified by the commissioner;

(2) ensure that organic and transitional certifications by the commissioner continue to meet national certification standards in order for organic citrus to maintain international marketability; and

(3) in all events maintain the effectiveness of the pest suppression program and disease management administered under this chapter.

(b) The board may not treat or require treatment of organic citrus groves with chemicals that are not approved for use on certified organic citrus. Rules adopted under Subsection (a) may provide indemnity for the organic citrus producers for reasonable losses that result from a prohibition of production of organic citrus or from any requirement of destruction of organic citrus.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 29 (S.B. 1749), Sec. 14, eff. September 1, 2015.

Sec. 80.027. PENALTIES. (a) A person who violates this chapter or a rule adopted under this chapter or who alters, forges, counterfeits, or uses without authority a certificate, permit, or other document issued under this chapter or under a rule adopted under this chapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

(c) If the commissioner determines that a violation of this chapter or a rule adopted under this chapter has occurred, the commissioner may request that the attorney general or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil, injunctive, or other appropriate relief.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.028. DISSOLUTION PROVISION. (a) The commissioner may order the dissolution of the corporation at any time the commissioner determines that the purposes of this chapter have been fulfilled or that the corporation is inoperative and abandoned. Dissolution shall be conducted in accordance with Section 80.014.

(b) If the corporation or the suppression program is discontinued for any reason, assessments approved, levied, or otherwise collectible on the date of discontinuance remain valid as necessary to pay the financial obligations of the corporation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 7.01, eff. June 17, 2011.

Sec. 80.029. ANNUAL REPORT. The board shall issue to the commissioner and the appropriate oversight committee in the house of representatives an annual report detailing its efforts to carry out the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.030. EXEMPTION FROM TAXATION. All payments, contributions, funds, and assessments received or held by the corporation under this chapter are exempt from state or local taxation, levies, sales, and any other process and are unassignable.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.031. USE OF BIO-INTENSIVE CONTROLS. (a) The commissioner shall develop and adopt rules to allow a citrus producer in a suppression program to use biological, botanical, or other nonsynthetic pest control methods. In developing rules, the commissioner shall consider:

(1) scientific studies and field trials of the effectiveness of a proposed alternative control method;

(2) the feasibility of using a proposed alternative control technique within a particular region;

(3) the degree of monitoring necessary to establish the success of the use of a proposed alternative control; and

(4) methods to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(b) A citrus producer that chooses to use an alternative method of control as provided in Subsection (a) shall notify the board. The board and the citrus producer shall coordinate their actions to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(c) The citrus producer shall pay any additional cost of bio-intensive control in addition to any assessment.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

Sec. 80.032. VENUE. Venue for an action arising out of this

chapter in which the corporation is a party is in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 10.01, eff. September 1, 2009.

SUBTITLE C. GRADING, PACKING, AND INSPECTING HORTICULTURAL PRODUCTS
CHAPTER 91. GENERAL GRADES AND PACKS OF FRUITS AND VEGETABLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEPARTMENT TO ADMINISTER. (a) The department shall administer this chapter and adopt rules necessary for its enforcement.

(b) The department may employ an assistant commissioner and other personnel to supervise the operation of an inspection service to carry out a cooperative agreement under Section 91.005 of this code.

Acts 1981, 67th Leg., p. 1220, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 323, Sec. 1, eff. Sept. 1, 1993.

Sec. 91.002. COMPLIANCE WITH STANDARDS. Grades and packs of fruits and vegetables must meet the standards established by this chapter.

Acts 1981, 67th Leg., p. 1221, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.003. INSPECTION SERVICE. (a) To carry out a cooperative agreement entered into under Section 91.005 of this code, the department may supervise the operation of a joint state-federal inspection service. The terms of the cooperative agreement govern the operation of the inspection service, appointment of inspectors, and manner of conducting inspections, however no provision of the inspection service agreement may be in violation of state law.

(b) An individual appointed as an inspector or to work in another capacity with an inspection service under Subsection (a) of this section is performing work for the state under the supervision of the department and is a member of the employee class of the Employees Retirement System of Texas under Section 812.003, Government Code.

Acts 1981, 67th Leg., p. 1221, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1993, 73rd Leg., ch. 323, Sec. 1, eff. Sept. 1, 1993.

Sec. 91.004. CERTIFICATE OF INSPECTION. (a) The department shall furnish certificates of inspection or other forms to evidence that an official inspection has been made. The department may issue a joint state-federal inspection certificate for an inspection conducted under a cooperative agreement entered into under Section 91.005 of this code.

(b) A certificate of inspection issued under this section is prima facie evidence of the grade, classification, pack, or other standard requirements of the fruits, nuts, or vegetables as of the time of inspection.

Acts 1981, 67th Leg., p. 1221, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1993, 73rd Leg., ch. 323, Sec. 1, eff. Sept. 1, 1993.

Sec. 91.005. COOPERATIVE AGREEMENTS. (a) The department may enter into cooperative agreements with the United States Department of Agriculture, or with any Texas firm, corporation, or association to carry out shipping point and receiving market inspections under the Agricultural Marketing Act of 1946 (7 U.S.C. Section 1621 et seq.). An agreement also may provide for the certification of grades of fruits, nuts, and vegetables under this chapter.

(b) The department also may enter into cooperative agreements with the United States Department of Agriculture or with federal administrative committees established by the United States Department of Agriculture under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. Section 671 et seq.) to administer and enforce marketing orders and programs.

(c) In addition to the grades established by this chapter, the department may adopt the United States standards for the fruits, nuts, and vegetables grown in this state by entering into a cooperative agreement with the United States Department of Agriculture under the Agricultural Marketing Act of 1946 (7 U.S.C. Section 1621 et seq.), or the department may adopt rules concerning the grades, grading, or regulation of fruits, nuts, and vegetables.

Acts 1981, 67th Leg., p. 1221, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1993, 73rd Leg., ch. 323, Sec. 1, eff. Sept. 1, 1993.

Sec. 91.0051. FUNDING OF A COOPERATIVE INSPECTION. (a) The legislature may not appropriate funds for the operation of an inspection service organized to carry out a cooperative agreement under this chapter. The legislature may appropriate funds necessary for the department to employ personnel to supervise an inspection service.

(b) Inspection activities conducted under a cooperative agreement under this chapter shall be self-financing. The department shall charge fees to a person who receives inspection services under a cooperative agreement.

(c) The department shall set fees at amounts that are approximately equal to the cost of providing inspection services.

(d) Notwithstanding any other provision of law, the department shall hold and disburse the fees collected under this chapter under the terms of the cooperative agreement governing the inspection activities for which the fees were collected.

Added by Acts 1993, 73rd Leg., ch. 323, Sec. 1, eff. Sept. 1, 1993.

Sec. 91.006. CULLS. (a) Fruits and vegetables that are too small, ill-shaped, or poor in general quality to meet the standards of this chapter for any other grade are culls.

(b) A person may not ship culls unless the culls are marked "culls" and placed in a separate consignment from other fruits and vegetables.

Acts 1981, 67th Leg., p. 1221, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.007. PACKAGE MARKINGS. A package of fruits or vegetables for which a grade is established under this chapter that is offered for sale or prepared for shipment shall be plainly marked with:

(1) the grade of the fruit or vegetable; and

(2) the name and post office address of the shipper.

Acts 1981, 67th Leg., p. 1221, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.008. PENALTY. (a) A person commits an offense if, as a grower, shipper's agent, packer, or representative of a transportation company, the person:

(1) refuses to allow an inspection under this chapter of fruits or vegetables that are packed or ready for shipment; or

(2) violates a provision of this chapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 107, eff. Sept. 1, 1989.

Sec. 91.009. COORDINATION OF FOOD SAFETY. (a) The department is the lead agency for education and training and shall assist the fresh fruit and vegetable industries with food safety issues and may provide assistance to federal agencies in their implementation of voluntary guidelines relating to sound agricultural practices.

(b) The department shall coordinate, plan, and approve training and awareness programs for producers and packers of fresh fruits and vegetables. A program under this subsection must inform and educate producers and packers regarding:

(1) sound agricultural practices;

(2) proper food handling procedures;

(3) the prevention of accidental or deliberately planned outbreaks of disease; and

(4) the enhancement of overall food safety.

(c) The department shall coordinate the planning and implementation of programs required by Subsection (b) with:

(1) colleges and universities in this state;

(2) the Texas AgriLife Extension Service;

(3) Texas AgriLife Research;

(4) the Department of State Health Services; and

(5) private industry.

(d) The department may adopt rules to implement this section. In the development of rules for the certification of approved food safety curriculum or training, the department shall consult and coordinate with the Department of State Health Services.

Added by Acts 2009, 81st Leg., R.S., Ch. 184 (H.B. 1908), Sec. 2, eff. May 27, 2009.

SUBCHAPTER B. CONTAINER STANDARDS

Sec. 91.021. COMPLIANCE WITH STANDARDS. Containers used for the shipment of fruits or vegetables must meet the minimum standards established by this subchapter.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.022. BUSHEL BASKET. A bushel basket must contain at least 2,150.4 cubic inches in the basket proper, regardless of the construction of the lid.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.023. FOUR-BASKET CRATE. (a) Each basket in a four-basket crate must be 5 by 8 inches at the bottom, 6 by 10 inches at the top, and 4 inches deep, must contain at least 201.6 cubic inches, and must hold at least three quarts dry measure.

(b) The heads of the crate must be 4-1/2 by 11 inches at the bottom, 13 inches long at the top, and at least 7/16 of an inch thick.

(c) The veneer or boards on the bottom, sides, and top must be at least 4-1/2, 4, and 5-1/2 inches wide, respectively, at least 1/7 of an inch thick, and 22 inches long.

(d) Crates and baskets must be made of good quality, substantial material. Both crates and baskets must be strong enough to withstand the usual strain of transportation and handling.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.024. SIX-BASKET CRATE. Each basket in a six-basket crate must contain at least 268.8 cubic inches.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.025. FOLDING ONION CRATE. A folding onion crate must be at least 19-5/8 inches long, 11-3/16 inches wide, and 9-3/16 inches deep, as measured on the inside, and must contain at least 2,154.4 cubic inches.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.026. BERRY BOX OR CRATE. (a) A quart berry box or crate must hold at least 24 quart baskets, each of which must contain at least 67.2 cubic inches dry measure.

(b) A pint berry box or crate must hold at least 24 pint baskets, each of which must contain at least 33.6 cubic inches dry measure.

Acts 1981, 67th Leg., p. 1222, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. PEACH GRADES AND PACKS

Sec. 91.041. GRADES. The standard peach grades are fancy, choice or No. 1, and No. 2.

Acts 1981, 67th Leg., p. 1223, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.042. FANCY GRADE. (a) Fancy peaches:

(1) are medium to large in size;

(2) have good color for the variety; and

(3) are firm and sound, or are properly mature for shipment to a distant market.

(b) Fancy peaches shall be carefully picked and closely packed in bushel baskets or in four-basket or six-basket crates.

Acts 1981, 67th Leg., p. 1223, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.043. CHOICE OR NO. 1 GRADE. (a) Choice or No. 1 Grade peaches are:

(1) average in size and color for the variety;

(2) sound and firm, or properly mature for shipment to a distant market; and

(3) practically free of blemishes.

(b) Choice or No. 1 Grade peaches shall be carefully picked and closely packed in bushel baskets or in four-basket or six-basket crates.

Acts 1981, 67th Leg., p. 1223, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.044. NO. 2 GRADE. Number 2 Grade peaches are all peaches that are not good enough for No. 1 Grade but are sound, suitable for market, and appropriate for reasonably distant shipment. A No. 2 Grade peach may have slight defects, including:

(1) small size;

(2) a slightly uneven surface;

(3) green color; or

(4) ripeness.

Acts 1981, 67th Leg., p. 1223, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.045. PEACH PACKS. (a) The standard peach packs for a six-basket crate are:

(1) 72's, which are packed by placing 1 and 2 alternately in 4 rows, 2 layers high, 6 to the layer on end, blossom end up;

(2) 96's, which are packed by placing 2 and 2 alternately in 4 rows, 2 layers high, 8 to the layer on end, blossom end up;

(3) 138's, which are packed by placing 2 and 1 alternately in 5 rows, 3 layers high, 8 and 7 alternately to the layer, flat;

(4) 162's, which are packed by placing 2 and 1 alternately in 6 rows, 3 layers high, 9 to the layer, flat;

(5) 180's, which are packed by placing 2 and 2 alternately in 5 rows, 3 layers high, 10 to the layer, flat;

(6) 216's, which are packed by placing 2 and 2 alternately in 6 rows, 3 layers high, 12 to the layer, flat;

(7) 270's, which are packed by placing 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer, flat; and

(8) 324's, which are packed by placing 3 and 3 alternately in 6 rows, 3 layers high, 18 to the layer, flat.

(b) Layers in a package shall be tightly filled. The top layer shall extend approximately one inch above the rim or edge of the bushel basket, crate basket, or box.

(c) As nearly as possible, peaches in a package must be uniformly ripe.

Acts 1981, 67th Leg., p. 1223, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. BERMUDA ONION GRADES

Sec. 91.061. GRADING CHARACTERISTICS. (a) A bright onion has the attractive pearly luster normal for Bermuda onions.

(b) The diameter of an onion is the greatest dimension at a right angle to a straight line between the stem and the root.

(c) A mature onion is firm.

(d) An onion is sunburned if it is discolored from exposure to the sun. The green color running down the veins in the crystal wax variety is not characteristic of sunburn unless the surface between the veins is green.

(e) An onion is well shaped if it is generally round, although not necessarily having exactly the typical flat Bermuda shape. A well-shaped onion may not have three or more sides, be thick-necked, or be badly pinched by dry, hard soil.

(f) An onion is practically free from damage if on casual examination no injury is apparent.

(g) Onions are of one variety if they consist of one type, such as the crystal wax (white), white Bermuda (yellow), or red Bermuda (red), and not a mixture of types.

(h) An onion is sound if it is not water-soaked, decayed, sprouted, or otherwise defective.

(i) The white Bermuda (yellow) onion is noticeably pink if it has a pink color that is readily apparent on casual examination.

Acts 1981, 67th Leg., p. 1224, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.062. GRADE NO. 1. Grade No. 1 Bermuda onions are:

(1) sound, mature, bright, well shaped, and of one variety;

(2) free from doubles, splits, bottle necks, and seed stems;

(3) practically free from damage caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical devices; and

(4) at least two inches in diameter.

Acts 1981, 67th Leg., p. 1224, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.063. GRADE NO. 1, LARGE. If more than 10 percent by weight of the onions in any lot of Grade No. 1 onions have a diameter of at least 3-1/2 inches, the onions shall be designated Grade No. 1, Large.

Acts 1981, 67th Leg., p. 1224, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.064. BOILER GRADE. Boiler grade onions are onions that meet other Grade No. 1 requirements, but are at least one and not more than two inches in diameter.

Acts 1981, 67th Leg., p. 1224, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.065. GRADE NO. 2. Grade No. 2 onions are:

(1) sound and of one variety;

(2) free from doubles, splits, bottle necks, and seed stems;

(3) practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical devices; and

(4) at least two inches in diameter.

Acts 1981, 67th Leg., p. 1224, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.066. GRADE NO. 2, LARGE. If more than 10 percent by weight of the onions in any lot of Grade No. 2 onions have a diameter of at least 3-1/2 inches, the onions shall be designated Grade No. 2, Large.

Acts 1981, 67th Leg., p. 1225, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.067. GRADE NO. 3. Grade No. 3 onions do not meet the requirements of a higher grade but are:

(1) sound;

(2) free from doubles, splits, bottle necks, and seed

stems;

(3) practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical devices; and

(4) at least one inch in diameter.

Acts 1981, 67th Leg., p. 1225, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.068. PERMISSIBLE VARIATIONS. (a) In order to allow for variations incident to commercial grading and handling, any lot of onions may, as limited by this section, contain onions that do not meet the grade requirements for the lot's grade.

(b) In any lot of Grade No. 1, Grade No. 1, Large, or Boiler Grade onions, not more than six percent by weight may fail to meet the grade requirements.

(c) In any lot of Grade No. 1, Grade No. 1, Large, or Boiler Grade yellow onions, not more than five percent by weight may be noticeably pink.

(d) In any lot of Grade No. 2, Grade No. 2, Large, or Grade No. 3 onions, not more than 10 percent by weight may fail to meet the grade requirements.

Acts 1981, 67th Leg., p. 1225, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. CABBAGE GRADES

Sec. 91.081. GRADE NO. 1. Grade No. 1 cabbage is:

(1) sound, green in color, reasonably hard, and trimmed such that three or fewer outside leaves are left on a head;

(2) free from stem rot and other diseases;

(3) practically free from dirt, wormholes, and lice;

(4) uncracked and not showing signs of going to seed or turning white from age; and

(5) at least 1-1/2 pounds but not more than 8 pounds in weight.

Acts 1981, 67th Leg., p. 1225, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.082. GRADE NO. 2. Grade No. 2 cabbage is sound cabbage that does not meet the requirements of Grade No. 1.

Acts 1981, 67th Leg., p. 1225, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.083. PERMISSIBLE VARIATIONS. (a) In order to allow for variations incident to commercial grading and handling, any lot of cabbage may, as limited by this section, contain cabbage that does not meet the grade requirements for the lot's grade.

(b) In any lot of Grade No. 1 cabbage:

(1) not more than five percent by weight may fail to meet the size requirement; and

(2) not more than three percent by weight may fail to meet the grade requirements other than size.

Acts 1981, 67th Leg., p. 1225, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. SNAP BEAN GRADES AND PACKS

Sec. 91.091. GRADING CHARACTERISTICS. A snap bean pod is overripe if:

(1) it does not snap when broken;

(2) it lacks abundant juice; and

(3) the beans in the pod show evidence of maturity.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.092. GRADE NO. 1. Grade No. 1 snap beans are:

(1) sound, bright, clean, and of one variety and color;

(2) free from leaves, stems, spots, insect damage, disease, and overripe pods; and

(3) from one-half to full grown.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.093. GRADE NO. 2. Grade No. 2 snap beans are snap beans that do not meet the requirements for Grade No. 1.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.094. PERMISSIBLE VARIATION. In order to allow for variations incident to commercial grading and handling, not more than three percent by weight of a lot of Grade No. 1 snap beans may be a different variety, but not a different color, from the rest of the lot.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.095. SNAP BEAN PACKS. Snap beans shall be packed in a hamper weighing at least 17 pounds net weight per one-half bushel when packed, or at least 34 pounds net weight per bushel when packed.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. BARTLETT PEAR GRADES AND PACKS

Sec. 91.111. EXTRA FANCY GRADE. Extra fancy pears:

(1) are sound, clean, and bright;

(2) have natural color and shape; and

(3) are free from worms, specks, blemishes, bruises, and limb scar red fruit.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.112. FANCY GRADE. Fancy pears have the same qualities as extra fancy pears, except not more than 10 percent of a lot of fancy pears may have slight scars or blemishes that do not injure the texture of the fruit or its keeping qualities.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.113. CHOICE GRADE. Choice pears have the same qualities as fancy pears, except not more than 10 percent of a lot of choice pears may be misshapen or have worm strings that have healed.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.114. PACKAGES AND MARKINGS. Pears shall be tightly packed in clean standard boxes that are marked on one end with the grade and number of pears contained in the package and the name and post office address of the packer.

Acts 1981, 67th Leg., p. 1226, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.115. PEAR PACKS. The standard pear packs are:

(1) four-tier, which is packed in four layers and contains a minimum of 120 pears per box;

(2) five-tier, which is packed in six layers and contains a minimum of 135 and a maximum of 180 pears per box; and

(3) six-tier, which is packed in six layers and contains 216 pears per box or is packed in five layers and contains 195 or 210 pears per box.

Acts 1981, 67th Leg., p. 1227, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER H. IRISH POTATO GRADES

Sec. 91.121. GRADING CHARACTERISTICS. (a) A potato is practically free from a named injury to the appearance if the injury is not readily apparent on casual examination and if damaged areas can be pared without appreciable waste in excess of that which occurs with perfect potatoes. Loss of the outer skin only is not an injury to appearance.

(b) The diameter of a potato is the greatest dimension at right angles to the longitudinal axis.

(c) A potato is free from serious damage if the appearance of the potato is not damaged from a named injury over more than 20 percent of the surface and if the damage can be removed by paring with waste of not more than 10 percent by weight in excess of that which occurs with perfect potatoes.

Acts 1981, 67th Leg., p. 1227, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.122. GRADE NO. 1. Grade No. 1 potatoes:

(1) are sound;

(2) are practically free from dirt or foreign matter, frost

injury, sunburn, second growth, cuts, mechanical damage, or damage from disease or insects;

(3) are a minimum of 1-3/4 inches in diameter; and

(4) have similar varietal characteristics.

Acts 1981, 67th Leg., p. 1227, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.123. GRADE NO. 2. Grade No. 2 potatoes:

(1) are practically free from frost injury and decay;

(2) are free from serious damage caused by dirt or other foreign matter, sunburn, second growth, cuts, disease, insects, or mechanical injury;

(3) are at least 1-1/2 inches in diameter; and

(4) have similar varietal characteristics.

Acts 1981, 67th Leg., p. 1227, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.124. PERMISSIBLE VARIATIONS. (a) In order to allow for variations incident to commercial grading and handling, any lot of potatoes may, as limited by this section, contain potatoes that do not meet the grade requirements for the lot's grade.

(b) In any lot of potatoes not more than three percent by weight may fail to meet the grade requirements other than size.

(c) In any lot of potatoes not more than five percent by weight may fail to meet the grade requirements for size.

(d) In any lot of potatoes not more than three percent by weight shall be allowed for shrinkage on all new potatoes grown in this state.

(e) A fair and reasonable estimate of the dirt that adheres to potatoes shall be made, and the weight of the dirt shall be deducted from the gross weight of the potatoes. The estimate may be made by removing and weighing the dirt from three or more samples weighing at least 50 pounds each.

Acts 1981, 67th Leg., p. 1227, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.125. CONTAINER MARKINGS. Potato containers shall be marked with the name and post office address of the grower or

shipper.

Acts 1981, 67th Leg., p. 1228, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER I. SWEET POTATO INSPECTION AND CLASSIFICATION

Sec. 91.141. AVAILABILITY OF DEPARTMENT SERVICES. (a) A grower of sweet potatoes in this state may dispose of the grower's own crop without complying with or being subject to the provisions of this subchapter.

(b) Sweet potatoes that are brought into this state are subject to the provisions of this subchapter.

(c) The department shall inspect, grade, and classify sweet potatoes if inspection and classification are requested by a person who intends to sell or transport sweet potatoes in commercial quantities.

Acts 1981, 67th Leg., p. 1228, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.142. RULES. The department shall adopt rules that relate to the standards and procedures used to grade, classify, pack, and inspect sweet potatoes and that relate to marking containers, issuing certificates of inspection, and tagging transport vehicles.

Acts 1981, 67th Leg., p. 1228, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 91.143. INSPECTION FEES. (a) A person requesting inspection shall pay a fee for the inspection in an amount set by rule of the department.

(b) The department shall set inspection fees at amounts that are approximately equal to the cost of providing inspection and classification services.

Acts 1981, 67th Leg., p. 1228, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 92. TOMATO STANDARDIZATION AND INSPECTION

SUBCHAPTER A. GENERAL

Sec. 92.001. POLICY. It is in the interest of the public

welfare of this state to provide growers, shippers, carriers, receivers, and consumers with evidence of the quality, quantity, and condition of tomatoes they grow, ship, or purchase. The purpose of this chapter is to authorize and prescribe the procedures by which growers and shippers of tomatoes may secure prompt and efficient inspection, classification, and grading of their product at reasonable cost.

Acts 1981, 67th Leg., p. 1229, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.002. DEFINITIONS. In this chapter:

(1) "Commercial quantity" means more than 500 pounds.

(2) "Cooperative agreement" means the agreement concerning shipping point inspection service having an October 1, 1931, effective date executed by the department and the United States Department of Agriculture, and all supplementary agreements executed by the department and Texas firms, corporations, or associations organized for that purpose.

(3) "Cooperative financing plan" means a system to finance and collect the expenses of inspection under a cooperative agreement.

(4) "Dealer" means a person who packs or delivers tomatoes in commercial quantities to a transporting agency for shipment.

(5) "Inspection certificate" means the joint federal-state inspection certificate under the cooperative agreement.

(6) "Inspector" means an employee of the department or the United States Department of Agriculture who is authorized to inspect or grade tomatoes or to certify tomatoes for shipment.

(7) "Person" means an individual, partnership, corporation, or association.

Acts 1981, 67th Leg., p. 1229, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.003. SEASONAL APPLICATION. This chapter is effective after March 31 and before July 16 each year.

Acts 1981, 67th Leg., p. 1230, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.004. EXCEPTIONS. (a) This chapter does not apply to:

(1) a sale or delivery of unpacked and unmarked tomatoes by the grower to another person for packing and resale;

(2) a bulk sale of tomatoes by the producer to a packer for grading, packing, processing, or storing;

(3) the conversion of tomatoes by a grower or packer into a tomato by-product;

(4) the sale of unpacked or unmarked tomatoes by a grower or packer to a person who operates a commercial by-product plant and who intends to convert the tomatoes into a by-product for resale; or

(5) a sale of tomatoes in less than commercial quantities.

(b) The department may permit a grower with an entire crop of tomatoes ripe on the vine to personally transport and sell those tomatoes to retail merchants or consumers. If the department determines that a permit granted under this subsection has been abused, the department may cancel the permit.

Acts 1981, 67th Leg., p. 1230, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.005. DEPARTMENT TO ADMINISTER. The department shall direct the inspection and certification of tomato grades, sizes, packs, markings, and container designations and may:

(1) adopt tomato container standards and grades that are not in conflict with federal standards and grades or those described in Subchapter C of this chapter;

(2) adopt rules relating to tomato inspections, standards, grades, packs, markings, and containers;

(3) adopt rules that in effect adopt a financing plan for inspection contributions under a cooperative agreement under Subchapter D of this chapter; and

(4) adopt rules relating to the issuance of licenses required under this chapter.

Acts 1981, 67th Leg., p. 1230, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.006. NOTICE. All notices provided for by this chapter shall be in writing unless this chapter specifically provides otherwise.

Acts 1981, 67th Leg., p. 1230, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. INSPECTION AND CERTIFICATION

Sec. 92.011. INSPECTION. (a) In accordance with this subchapter, the department shall inspect tomatoes that a person intends to pack for transportation in commercial quantities.

(b) In the notice under Section 92.012 of this code, the packer or dealer may designate the location where the tomatoes are packed or the transportation point as the inspection site.

Acts 1981, 67th Leg., p. 1231, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.012. NOTICE. A person who intends to pack tomatoes for transportation shall give timely written or oral notice to the department:

(1) of the time and place the tomatoes are to be packed and transported; or

(2) that the tomatoes are to be packed and transported to the inspection station nearest the point of loading for transportation.

Acts 1981, 67th Leg., p. 1231, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.013. CERTIFICATE OF INSPECTION. After completing a tomato inspection, the department shall give the dealer a certificate of inspection that complies with the requirements of the cooperative agreement.

Acts 1981, 67th Leg., p. 1231, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. CONTAINERS, GRADES, AND PACKS

Sec. 92.021. STANDARD CONTAINERS. Containers used to transport tomatoes shall meet the minimum standards established for fruits and vegetables by Subchapter B, Chapter 91, of this code or the standards adopted by the department.

Acts 1981, 67th Leg., p. 1231, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.022. FANCY AND CHOICE GRADES. Fancy and choice tomatoes are:

(1) sound;

(2) free from undesirable scars, cat faces, and insect or other damage; and

(3) packed according to standards established by this subchapter.

Acts 1981, 67th Leg., p. 1231, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.023. FANCY TOMATO PACKS. (a) The standard packs for a six-basket crate of fancy tomatoes are:

(1) 72's, which are packed by placing 2 and 2 alternately in 3 rows, 2 layers high, 6 to the layer, blossom end up, 12 to the basket;

(2) 84's, which are packed by placing 2 and 2 alternately in 4 rows on edge, 8 to the layer for the first layer, 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the third or last layer, 15 to the basket; and

(3) 108's, which are packed by placing 3 and 3 alternately in 3 rows on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

(b) The standard packs for a four-basket crate of fancy tomatoes are:

(1) 48's, which are packed by placing 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 12 to the basket;

(2) 56's, which are packed by placing 2 and 2 alternately in 4 rows on edge, 8 to the layer for the first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 14 to the basket;

(3) 60's, which are packed by placing 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 15 to the basket;

(4) 64's, which are packed by placing 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 1 and 2 alternately in 7 rows, on edge, blossom end out, 10 to the layer, 16 to the basket; and

(5) 72's, which are packed by placing 3 and 3 alternately in 3 rows on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Acts 1981, 67th Leg., p. 1231, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.024. CHOICE TOMATO PACKS. (a) The standard packs for a six-basket crate of choice tomatoes are:

(1) 120's, which are packed by placing 2 and 2 alternately in 4 rows on edge 8, to the layer for the first layer, and 3 and 3 alternately in 4 rows on edge, blossom end out, 12 to the layer for the second or last layer, 20 to the basket;

(2) 144's, which are packed by placing 3 and 3 alternately in 4 rows on edge, 12 to the layer for the first layer and 3 and 3 in 4 rows on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket; and

(3) 180's, which are packed by placing 3 and 3 alternately in 5 rows on edge, blossom end out, 15 to the layer for the second or last layer, 30 to the basket.

(b) The standard packs for a four-basket crate of choice tomatoes are:

(1) 84's, which are packed by placing 3 and 3 alternately in 3 rows on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 4 rows on edge, blossom end out, 12 to the layer for the second or last layer, 21 to the basket;

(2) 88's, which are packed by placing 3 and 3 alternately in 3 rows on edge, 9 to the layer for the first layer, and 1 and 2 alternately in 9 rows on edge, blossom end out, 18 to the layer, 22 to the basket;

(3) 96's, which are packed by placing 3 and 3 alternately in 4 rows on edge, 12 to the layer for the first layer, and 3 and 3 alternately in 4 rows on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket; and

(4) 104's, which are packed by placing 1 and 2 alternately

in 9 rows on edge, 13 to the layer for the first layer, and 1 and 2 alternately in 9 rows on edge, 13 to the layer, blossom end out, for the second or last layer, 26 to the basket.

Acts 1981, 67th Leg., p. 1232, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.025. UNIFORMITY WITHIN A PACK. As nearly as possible, tomatoes in a crate or package shall be uniformly ripe.

Acts 1981, 67th Leg., p. 1232, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.026. DECEPTIVE CONTAINER DESIGNATIONS. A person may not pack or ship tomatoes in a container or subcontainer that is imprinted or inscribed with a designation of grade, standard, count, arrangement, or pack that is false and misleading.

Acts 1981, 67th Leg., p. 1233, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. COOPERATIVE AGREEMENTS

Sec. 92.031. EXECUTION OF AGREEMENTS. The department may enter into cooperative agreements with the United States Department of Agriculture, or with any Texas firm, corporation, or association that is organized for that purpose, or both. An agreement may provide for the amount of contributions to be paid by dealers for inspection and grading services to be performed by the department under this chapter.

Acts 1981, 67th Leg., p. 1233, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.032. LICENSES. Department inspectors and a firm, corporation, or association that has executed a cooperative agreement shall obtain a license from the department.

Acts 1981, 67th Leg., p. 1233, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.033. CONTRIBUTIONS. (a) The legislature may not

appropriate funds for the enforcement of this chapter.

(b) The department shall set contributions under this chapter in amounts that are consistent with the cost of maintaining inspection and grading services under the cooperative agreement.

(c) The contribution for each different inspection or grading service may be different.

(d) The amount of the contribution that the department may charge for services rendered is the prescribed amount or the actual cost of the service, whichever is less.

(e) The department shall hold or disburse the funds contributed under this chapter in accordance with the cooperative agreement.

Acts 1981, 67th Leg., p. 1233, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.034. PAYMENT OF CONTRIBUTIONS. (a) A packer or dealer shall pay the contribution under this subchapter to the inspector who inspects or grades the tomatoes.

(b) An inspector who renders an inspection or grading service shall withhold delivery of the inspection certificate until the contribution required under this subchapter is paid.

Acts 1981, 67th Leg., p. 1233, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.035. AUDIT. (a) The accounts and records of the chief inspector of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The state auditor shall make a written report of the results of an audit to the commissioner.

Acts 1981, 67th Leg., p. 1233, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 96, eff. Sept. 1, 1989.

SUBCHAPTER E. PENALTIES

Sec. 92.041. OFFENSES. A person commits an offense if the person:

(1) knowingly or intentionally interferes with an employee of the department in the performance of a duty under this chapter;

(2) knowingly or intentionally fails to obey a rule adopted by the department under this chapter;

(3) delivers or accepts tomatoes for transport, or transports tomatoes that are not accompanied by a certificate of inspection;

(4) accepts tomatoes for transport if the inspection certificate that accompanies the tomatoes shows on its face that the tomatoes are not in compliance with this chapter;

(5) knowingly or intentionally delivers tomatoes for transport if the tomatoes are packed in a container or subcontainer that is deceptively marked concerning the grade, standard, count, arrangement, or pack of the contents;

(6) packs or transports tomatoes in a container or subcontainer that is deceptively marked concerning the grade, standard, size, count, pack, arrangement, brand, or trademark of the contents;

(7) transports tomatoes in an unauthorized container or subcontainer;

(8) sells, delivers for transport, or packs or consigns for sale tomatoes unless the tomatoes conform to the standards, grades, or classifications under this chapter;

(9) forges, falsifies, or changes an inspection certificate;

(10) is in business as a dealer in tomatoes while serving as commissioner or as an employee of the department, except that the commissioner and employees of the department may sell tomatoes they grow or produce; or

(11) violates a provision of this chapter.

Acts 1981, 67th Leg., p. 1234, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 92.042. PENALTY. An offense under Section 92.041 of this subchapter is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1234, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 108, eff. Sept. 1, 1989.

CHAPTER 93. CITRUS FRUIT STANDARDIZATION AND INSPECTION

SUBCHAPTER A. GENERAL

Sec. 93.001. POLICY. It is in the interest of the public welfare of this state to provide growers, shippers, carriers, receivers, and consumers with evidence of the quality and condition of the citrus fruit they grow, ship, or purchase. The purpose of this chapter is to authorize and prescribe the procedures by which growers and shippers of citrus fruit may secure prompt and efficient inspection and classification of their product at reasonable cost.

Acts 1981, 67th Leg., p. 1235, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.002. APPLICATION. This chapter applies only in the citrus zone established under Section 73.003 of this code.

Acts 1981, 67th Leg., p. 1236, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.003. EXCEPTIONS. (a) This chapter does not prevent:

(1) a grower of citrus fruit from disposing of the grower's own crop without complying with this chapter;

(2) a grower or packer of citrus fruit from manufacturing the citrus fruit into a by-product; or

(3) a grower or packer of citrus fruit from selling unpacked or unmarked citrus fruit to a person who operates a commercial by-products factory within the area to which this chapter applies and who intends to manufacture the citrus fruit into a by-product for resale.

(b) This chapter does not apply to a quantity of citrus fruit that amounts to five or fewer containers.

Acts 1981, 67th Leg., p. 1236, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.004. DEPARTMENT TO ADMINISTER. The department:

(1) shall direct the inspection, grading, and classification of grapefruit and oranges;

(2) shall adopt and enforce rules relating to grading, packing, and marketing grapefruit and oranges;

(3) may adopt rules relating to marking containers, issuing certificates of inspection, and tagging transportation vehicles and

other rules the department considers necessary to improve the methods by which grapefruit and oranges are marketed;

(4) may adopt rules that adopt a financing plan for inspection contributions under a cooperative plan under Subchapter D of this chapter; and

(5) shall adopt rules relating to the licenses required under this chapter.

Acts 1981, 67th Leg., p. 1236, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.005. REGISTERED BRANDS AND TRADEMARKS. (a) Brands and trademarks and their United States grade definition shall, if eligible, be registered with the department.

(b) To be eligible for registration, a brand or trademark must:

(1) be defined by the minimum requirements of a grade, or a combination of grades, established under this chapter; or

(2) meet or exceed the requirements of U.S. No. 2 grade.

Acts 1981, 67th Leg., p. 1236, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. INSPECTION AND CERTIFICATION

Sec. 93.011. INSPECTION. (a) An authorized inspector shall inspect citrus fruit.

(b) A person who is subject to this chapter shall either notify the department of the time and place citrus fruit is to be loaded or report to the inspection station nearest the point of loading.

Acts 1981, 67th Leg., p. 1236, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.012. CERTIFICATE OF INSPECTION. (a) After completing a citrus fruit inspection the inspector shall issue to the shipper a certificate of inspection that designates the grade of the citrus fruit inspected.

(b) A certificate of inspection issued under this section is prima facie evidence of the grade of the citrus fruit as of the time of inspection.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.013. RIGHTS OF A SHIPPER REGARDING NONCONFORMING CITRUS FRUIT. In a written instrument that is delivered to a consignor of citrus fruit, a shipper or carrier may reserve the right to reject and return the citrus fruit, or to hold the citrus fruit at the expense and risk of the consignor, if after inspection it is determined that the citrus fruit was delivered for shipment in violation of this chapter.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. CONTAINERS, GRADES, PACKS AND MARKS

Sec. 93.021. CONTAINER STANDARDS. (a) Citrus fruit shall be packed in closed containers that are approved by the department.

(b) The standard orange box is 12 by 12 by 12 inches, and the standard one-half orange box is 12 by 12 by 6 inches, both sizes being measured on the inside.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.022. FANCY BRIGHT GRADE. Fancy bright oranges, satsumas, tangerines, and grapefruit are:

(1) bright in color;

(2) shapely in form;

(3) practically free from skin defects and blemishes;

(4) fine in texture;

(5) reasonably thin;

(6) heavy and juicy; and

(7) free from frost damage.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.023. BRIGHT GRADE. Bright oranges, satsumas, tangerines, and grapefruit are:

(1) fairly bright in color;

(2) less fine and smooth in texture, and have a thicker skin, than fancy brights; and

(3) may have skin defects that do not affect the merchantable quality of the fruit.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.024. FANCY RUSSET GRADE. Fancy russet oranges, satsumas, tangerines, and grapefruit have the same general qualities as fancy bright grade citrus fruit except fancy russets have coloration that is golden russet.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.025. RUSSET GRADE. Russet oranges, satsumas, tangerines, and grapefruit have the same general qualities as bright grade citrus fruit except russets have coloration that is rusty brown.

Acts 1981, 67th Leg., p. 1237, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.026. ORANGE PACKS. The standard orange packs are:

(1) 96's, which are packed by placing 3 and 3 alternately in 4 rows, 4 layers high, 12 to the layer;

(2) 126's, which are packed by placing 3 and 2 alternately in 5 rows, 5 layers high, 13 and 12 alternately to the layer;

(3) 150's, which are packed by placing 3 and 3 alternately in 5 rows, 5 layers high, 15 to the layer;

(4) 176's, which are packed by placing 4 and 3 alternately in 5 rows, 5 layers high, 18 and 17 alternately to the layer;

(5) 200's, which are packed by placing 4 and 4 alternately in 5 rows, 5 layers high, 20 to the layer;

(6) 216's, which are packed by placing 3 and 3 alternately in 6 rows, 6 layers high, 18 to the layer;

(7) 252's, which are packed by placing 4 and 3 alternately in 6 rows, 6 layers high, 21 to the layer; and

(8) 288's, which are packed by placing 4 and 4 alternately in 6 rows, 6 layers high, 24 to the layer.

Acts 1981, 67th Leg., p. 1238, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.027. SATSUMA AND TANGERINE PACKS. The standard satsuma and tangerine packs are:

(1) 90's, which are packed by placing 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer;

(2) 106's, which are packed by placing 4 and 3 alternately in 5 rows, 3 layers high, 18 and 17 alternately to the layer;

(3) 120's, which are packed by placing 4 and 4 alternately in 5 rows, 3 layers high, 20 to the layer;

(4) 168's, which are packed by placing 4 and 3 alternately in 6 rows, 4 layers high, 21 to the layer;

(5) 196's, which are packed by placing 4 and 3 alternately in 7 rows, 4 layers high, 25 and 24 alternately to the layer;

(6) 216's, which are packed by placing 5 and 4 alternately in 6 rows, 4 layers high, 27 to the layer; and

(7) 224's, which are packed by placing 4 and 4 alternately in 7 rows, 4 layers high, 28 to the layer.

Acts 1981, 67th Leg., p. 1238, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.028. GRAPEFRUIT PACKS. The standard grapefruit packs are:

(1) 28's, which are packed by placing 2 and 1 alternately in 3 rows, 3 layers high, 5 and 4 alternately to the layer;

(2) 36's, which are packed by placing 2 and 2 alternately in 3 rows, 3 layers high, 6 to the layer;

(3) 46's, which are packed by placing 3 and 2 alternately in 3 rows, 3 layers high, 8 and 7 alternately to the layer;

(4) 54's, which are packed by placing 3 and 3 alternately in 3 rows, 3 layers high, 9 to the layer;

(5) 64's, which are packed by placing 2 and 2 alternately in 4 rows, 4 layers high, 8 to the layer;

(6) 80's, which are packed by placing 2 and 2 alternately in 4 rows, 5 layers high, 8 to the layer; and

(7) 96's, which are packed by placing 3 and 3 alternately in 4 rows, 4 layers high, 12 to the layer.

Acts 1981, 67th Leg., p. 1238, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.029. PACKING STANDARDS. (a) Packed citrus fruit shall be uniform in size.

(b) Oranges, satsumas, and tangerines shall be packed "stem-in, twist" with the blossom end down in the first layer, and the stem end down in all other layers.

(c) Grapefruit shall be packed on edge, except the 80 pack shall be packed flat like oranges.

Acts 1981, 67th Leg., p. 1239, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.030. LABELING. (a) Citrus fruit that is packed or offered for shipment under this chapter shall be marked with its official grade or labeled or stamped with a registered brand or trademark.

(b) Grapefruit that is transported, marketed, or sold in this state in original perishable form shall be marked with the name of the state or foreign country of its origin in letters that are at least three-sixteenths of an inch high, or with individual trade names or copyrighted trademarks that sufficiently identify the state or foreign country of origin.

(c) Subsection (b) of this section is satisfied if not more than 25 percent of a lot of citrus fruit is improperly or partially marked.

(d) A person may not pack citrus fruit in a used container or subcontainer unless the markings, certificates of inspection, and designations of brand, trademark, quality, and grade that do not apply to the contents have been removed or obliterated.

Acts 1981, 67th Leg., p. 1239, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.031. IMPORTED CITRUS FRUIT. Citrus fruit shipped into this state from any other state or territory shall comply with the grading, packing, and marking requirements of this chapter.

Acts 1981, 67th Leg., p. 1239, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.032. PERMISSIBLE VARIATIONS. The standards established under this subchapter may be varied to the extent that:

(1) there may be a 10 percent difference in size between the citrus fruit on the top and the citrus fruit in the interior of a pack; and

(2) there may be a 3 percent difference in quantity between the actual count in a pack and the count prescribed.

Acts 1981, 67th Leg., p. 1239, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. COOPERATIVE AGREEMENTS

Sec. 93.041. EXECUTION OF AGREEMENTS. The department may enter into cooperative agreements with the United States Department of Agriculture or with any Texas firm, corporation, or association that is organized for that purpose, or both. An agreement may provide for the inspection of citrus fruit and for the amount of contributions to be paid by dealers and shippers for inspection and grading services to be performed by the department under this chapter.

Acts 1981, 67th Leg., p. 1239, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.042. LICENSES. Inspectors and a firm, corporation, or association that has executed a cooperative agreement shall obtain a license from the department.

Acts 1981, 67th Leg., p. 1239, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.043. STANDARDS. In accordance with the terms of a cooperative agreement, the department shall adopt United States standards to be used when grapefruit and oranges are inspected under this subchapter.

Acts 1981, 67th Leg., p. 1240, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.044. CONTRIBUTIONS. (a) The legislature may not appropriate funds for the enforcement of this chapter.

(b) The department shall set contributions under this subchapter in amounts that are consistent with the cost of maintaining inspection and grading services and the issuance of

certificates of inspection under this chapter.

(c) The contribution for each different inspection or grading service on each different commodity may be different.

(d) The amount of the contribution that the department may charge for services rendered may not exceed the actual cost of the service performed in a licensed packing house.

Acts 1981, 67th Leg., p. 1240, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. PURCHASE OF CITRUS FRUIT BY WEIGHT

Sec. 93.051. REQUIREMENT TO WEIGH; PUBLIC WEIGHER. Citrus fruit that is purchased by weight prior to packing shall be weighed at the expense of the buyer by a public weigher.

Acts 1981, 67th Leg., p. 1240, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.052. CERTIFICATE OF WEIGHT. (a) A public weigher shall issue a certificate of weight to a buyer or shipper of citrus fruit that is required to be weighed under this subchapter.

(b) The buyer shall deliver the certificate provided under this section to the seller prior to making an accounting or settlement on the transaction.

Acts 1981, 67th Leg., p. 1240, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.053. FEES. A public weigher is entitled to receive a fee in the following amount as full payment for issuance of a weight certificate:

(1) 10 cents if a net load weighs, 7,000 pounds or less;

(2) 15 cents if a net load weighs more than 7,000 pounds but not more than 14,000 pounds; or

(3) 20 cents if a net load weighs more than 14,000 pounds.

Acts 1981, 67th Leg., p. 1240, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. PENAL PROVISIONS

Sec. 93.061. OFFENSES. A person commits an offense if the

person:

(1) accepts for shipment or ships citrus fruit that is not accompanied by a valid certificate of inspection;

(2) ships citrus fruit in bulk except as provided by Section 93.003 of this code;

(3) prepares, delivers for shipment, loads, transports, offers for sale, or sells for shipment citrus fruit that is packed, loaded, or arranged to conceal the true grade or otherwise misrepresent the contents;

(4) mislabels a container of citrus fruit;

(5) while serving as the commissioner or as an employee of the department, is directly or indirectly in the business of buying or selling citrus fruit or dealing in citrus fruit on a commission basis;

(6) intentionally interferes with the commissioner or an employee of the department in the performance of duties;

(7) packs for sale, consigns for sale, or sells citrus fruit that does not conform to minimum grades under this chapter or that has not been inspected under this chapter; or

(8) violates a provision of this chapter.

Acts 1981, 67th Leg., p. 1240, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 93.062. PENALTY. An offense under Section 93.061 of this code is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1241, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 109, eff. Sept. 1, 1989.

CHAPTER 94. CITRUS FRUIT MATURITY STANDARDS

SUBCHAPTER A. GENERAL

Sec. 94.001. DEFINITIONS. In this chapter:

(1) "Distributing house" means a place that receives or ships, or a truck or railroad car that carries, citrus fruit that has been shipped into this state from another.

(2) "Grove" means an area where citrus fruit is grown, including a yard, garden, or orchard.

(3) "Packing house" means a place where citrus fruit is

packed or prepared to be marketed or transported.

Acts 1981, 67th Leg., p. 1242, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.002. EXCEPTIONS. Except to the extent specifically provided by this chapter, this chapter does not apply to:

(1) citrus fruit other than citrus grandis, osbeck, commonly known as grapefruit, and citrus sinensis, osbeck, commonly known as oranges;

(2) a sale of citrus fruit "on the trees";

(3) grapefruit that is shipped after December 1 of a year and before August 1 of the following year;

(4) early or midseason oranges that are shipped after November 1 of a year and before August 1 of the following year; or

(5) transportation of citrus fruit from a grove to a packing house located in this state.

Acts 1981, 67th Leg., p. 1242, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 290, Sec. 1, eff. June 5, 1995.

Sec. 94.003. DEPARTMENT TO ADMINISTER. (a) The department shall direct and supervise the inspection and certification of maturity of citrus fruit under this chapter. The department shall adopt rules that define maturity standards for grapefruit and maturity standards for oranges according to the amount of juice and the amount of soluble solids in the fruit and the ratio of soluble solids to anhydrous citric acids in the fruit. The department may adopt rules relating to:

(1) the number and character of certificates of inspection and maturity;

(2) inspection requests; and

(3) seasonal requirements of citrus fruit for fitness for human consumption.

(b) The department may direct and supervise the inspection and certification of maturity of citrus fruit under this chapter through the operation of an inspection service organized under Subchapter A, Chapter 91, of this code.

Acts 1981, 67th Leg., p. 1242, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1993, 73rd Leg., ch. 323, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 290, Sec. 2, eff. June 5, 1995.

Sec. 94.005. STAFF AND EXPENSES. (a) The department may employ a chief of the maturity division.

(b) The department may employ a staff that is adequate to enforce this chapter effectively.

(c) The department may pay all expenses necessarily incurred to enforce this chapter.

Acts 1981, 67th Leg., p. 1243, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. PACKING HOUSES

Sec. 94.011. REGISTRATION. (a) Each year, the owner, manager, or operator of a packing house that is in operation during the fruit shipping season shall register the packing house with the department at least 10 days before packing or preparing citrus fruit for sale or transportation.

(b) The application for registration under this section must include the location, shipping points, and post office address of the packing house.

Acts 1981, 67th Leg., p. 1243, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.012. NOTICE OF OPERATION. After October 14 and before December 17 of each year, the owner, manager, or operator of a packing house shall notify the department in writing of the date packing operations are to begin. The notice is due at least seven days prior to beginning operations.

Acts 1981, 67th Leg., p. 1243, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. MATURITY STANDARDS

Sec. 94.021. GRAPEFRUIT. Grapefruit that meet the maturity standards for grapefruit established by rule of the department are mature.

Acts 1981, 67th Leg., p. 1243, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 290, Sec. 3, eff. June 5, 1995.

Sec. 94.022. ORANGES. Oranges that meet the maturity standards for oranges established by rule of the department are mature.

Acts 1981, 67th Leg., p. 1244, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 290, Sec. 4, eff. June 5, 1995.

Sec. 94.025. UNFIT CITRUS FRUIT. (a) Citrus fruit that is immature, unripe, overripe, frozen, frost damaged, or otherwise unfit for consumption may not be sold or offered for sale.

(b) Grapefruit that is immature or otherwise unfit for consumption may not be prepared for sale or transportation, transported, or received for any purpose prohibited by this section, from December 2 of one year to July 31 of the following year. Early or midseason oranges that are immature or otherwise unfit for consumption may not be prepared for sale or transportation, transported, or received for any purpose prohibited by this section, from November 2 of one year to July 31 of the following year.

Acts 1981, 67th Leg., p. 1244, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 290, Sec. 5, eff. June 5, 1995.

SUBCHAPTER D. CITRUS FRUIT INSPECTION

Sec. 94.031. INSPECTION. (a) Grapefruit may not be transported, or prepared, received, or delivered for transportation or market, after July 31 and before December 2 each year unless the grapefruit has been inspected for maturity and approved by a citrus fruit inspector employed by or otherwise under the direction and supervision of the department or by a United States Department of Agriculture citrus fruit inspector and is accompanied by a maturity stamp.

(b) Early and midseason oranges may not be transported, or prepared, received, or delivered for transportation or market, after July 31 and before November 2 each year unless the oranges have been inspected for maturity and approved by a citrus fruit inspector

employed by or otherwise under the direction and supervision of the department or by a United States Department of Agriculture citrus fruit inspector and are accompanied by a maturity stamp.

(c) A certificate of inspection and maturity issued under this section must identify the citrus fruit to which it relates.

Acts 1981, 67th Leg., p. 1244, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 290, Sec. 6, eff. June 5, 1995.

Sec. 94.032. MATURITY STAMPS. (a) If the requirements of this chapter are met and the department receives the fee required under this subchapter, the department shall issue maturity stamps to vendors and shippers of citrus fruit.

(b) The maturity stamp is evidence that the inspection fee has been paid.

(c) A vendor or shipper shall securely attach a maturity stamp to:

(1) each package of citrus fruit that is prepared for sale or delivery for transportation; or

(2) the bill of lading or other shipping receipt, if the citrus fruit is prepared for sale or delivery for transportation in bulk.

Acts 1981, 67th Leg., p. 1244, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.033. INSPECTION SITES. Citrus fruit shall be inspected and certificates of inspection and maturity issued only at a grove, registered packing house, or distributing house.

Acts 1981, 67th Leg., p. 1245, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.034. INSPECTION AT A GROVE. (a) A person may request and is entitled to receive a citrus fruit inspection by the department at a grove.

(b) An inspector shall test a representative sample of the citrus fruit in the grove in the presence of the owner of the grove or the owner's agent.

(c) Following inspection, the inspector shall issue a

certificate of clearance that authorizes the removal and sale of citrus fruit that is satisfactory.

Acts 1981, 67th Leg., p. 1245, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.035. INSPECTION FEES. (a) A person who sells or ships grapefruit after July 31 and before December 2 of a year, or early or midseason oranges after July 31 and before November 2 of a year, shall pay to the department a fee, as provided by department rule.

(b) The fees under this section are due when citrus fruit is prepared for market or transportation.

Acts 1981, 67th Leg., p. 1245, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 290, Sec. 7, eff. June 5, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 2.42, eff. Sept. 1, 1995.

Sec. 94.036. DENIAL OF CERTIFICATE. A department inspector may not issue a certificate of inspection and maturity to a packing house that has not complied with Section 94.011, 94.012, or 94.025 of this code.

Acts 1981, 67th Leg., p. 1245, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.037. IMPORTED CITRUS FRUIT. The department may test citrus fruit brought into this state from any outside area for marketing or sale if there is reason to believe that the citrus fruit does not comply with the maturity standards of this chapter for similar citrus fruit produced in this state.

Acts 1981, 67th Leg., p. 1245, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.038. INSPECTION FOR SUBSTITUTION AND CONDEMNATION OF UNFIT CITRUS FRUIT. (a) The department may conduct tests of citrus fruit at any location where citrus fruit is offered for sale or for shipment if there is reason to believe that immature or green citrus fruit has been substituted for ripe citrus fruit.

(b) If after inspecting and testing citrus fruit that is being

or has been prepared for sale or transportation the department determines that the citrus fruit is unfit for consumption, the unfit citrus fruit is condemned as a public nuisance and as detrimental to public health.

(c) The department or the sheriff of the county where the citrus fruit is located shall seize and destroy condemned citrus fruit.

(d) In lieu of seizure and destruction of condemned citrus fruit, the department may allow disposition by the owner in accordance with department rules.

Acts 1981, 67th Leg., p. 1245, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. PENALTIES

Sec. 94.051. OFFENSES. A person commits an offense if the person:

(1) as a department inspector, falsifies a certificate of inspection and maturity or fails to collect the inspection fee under this chapter;

(2) operates a citrus fruit packing house, or packs or prepares citrus fruit for sale or transportation in a packing house, unless the person has registered the packing house and given the notices required under this chapter;

(3) sells, delivers, transports, or delivers or receives citrus fruit for transportation, unless the citrus fruit bears the stamps provided by the department to indicate that the fees on the citrus fruit have been paid;

(4) intentionally substitutes green fruit for ripe fruit that has received a clearance certificate;

(5) interferes with an authorized inspector in performing a requirement of this chapter; or

(6) violates any other provision of this chapter.

Acts 1981, 67th Leg., p. 1246, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 94.052. PENALTY. An offense under Section 94.051 of this code is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1246, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, Sec. 110, eff. Sept. 1, 1989.

CHAPTER 95. CITRUS FRUIT COLORING MATTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 95.001. DEFINITION. In this chapter, "coloring matter" means a dye, a liquid, a concentrate, a material containing a dye, or a combination of materials that react to form a dye, that is used to enhance the color of citrus fruit by the addition of artificial color to the peel.

Acts 1981, 67th Leg., p. 1247, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.002. APPLICATION. (a) This chapter does not apply to a process or treatment that merely brings out or accelerates the natural color of citrus fruit.

(b) This chapter does not apply to citrus fruit other than citrus grandis, osbeck, commonly known as grapefruit, citrus sinensis, osbeck, commonly known as oranges, and citrus nobilis delicios, commonly known as tangerines, that are grown in this state.

Acts 1981, 67th Leg., p. 1247, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.003. DEPARTMENT TO ADMINISTER. (a) The department shall administer this chapter and adopt rules necessary for its enforcement, including rules to assure that citrus fruit that has been treated with coloring matter does not unreasonably vary in color from the color of the best ripe fruit of the same variety generally produced in this state.

(b) The department shall enforce this chapter, and may direct and supervise the enforcement of this chapter through the operation of an inspection service organized under Subchapter A, Chapter 91, of this code.

Acts 1981, 67th Leg., p. 1247, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1993, 73rd Leg., ch. 323, Sec. 3, eff. Sept. 1, 1993.

SUBCHAPTER B. MANUFACTURE, SALE, OR USE OF COLORING MATTER

Sec. 95.011. CERTIFICATION OF SAFETY. (a) Except as provided by this section, a person may not use a dye or color in the manufacture of coloring matter unless it has been certified harmless and suitable for use in foods by the United States Department of Agriculture.

(b) The department shall issue a temporary permit allowing the use of a color or dye for which certification is pending if:

(1) analysis by the department determines that the color or dye contains antimony, arsenic, barium, lead, copper, mercury, zinc, other heavy metals, or other substances known to be injurious to health, only in amounts permitted in certified food colors by the United States Department of Agriculture; and

(2) the cost of analysis is paid by the person who requests the temporary permit.

Acts 1981, 67th Leg., p. 1248, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.012. LICENSE REQUIRED. A person may not manufacture, use, or offer for use or sale a coloring matter for citrus fruit until the coloring matter is approved and the person is granted a license by the department.

Acts 1981, 67th Leg., p. 1248, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.013. ANALYSIS BY DEPARTMENT. (a) A person shall give the formula and a sample of a coloring matter, together with the formula of a noncertified dye used in the manufacture of the coloring matter, to the department before offering to sell the coloring matter or allowing another person to use, sell, or allow the use of the coloring matter.

(b) On examination of a formula and analysis of a sample of coloring matter provided under this section, the department shall deny a request for a license under Section 95.012 of this code if:

(1) either the formula or the sample contains an ingredient prohibited under Section 95.011 of this code or any other ingredient known to be dangerous to health under the conditions of its use; or

(2) the sample varies materially from the formula.

(c) A formula provided under this section is confidential

information that may not be disclosed outside the department except on court order as necessary to enforce this chapter.

Acts 1981, 67th Leg., p. 1248, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.014. BOND. (a) A person who obtains a license under Section 95.012 of this code may not exercise the license until the person executes a bond in the amount of $5,000 payable to the governor and conditioned on the coloring matter being free from an ingredient that is harmful to the quality of citrus fruit or to health.

(b) A bond shall be cash or a surety bond cosigned by a surety company that is authorized to do business in this state.

(c) The department shall approve the form of bond.

(d) The aggregate liability on a bond may not exceed $5,000.

(e) A person who has a claim against the bond may bring an action against the principal and the surety, jointly and severally. A judgment obtained against either the principal or surety, or both, shall include costs.

Acts 1981, 67th Leg., p. 1248, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.015. NOTICE OF USE. A person shall notify the department before using or permitting the use of coloring matter on citrus fruit. If forms for that purpose are prescribed and furnished by the department, the notice must be on those forms.

Acts 1981, 67th Leg., p. 1249, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.016. STANDARDS FOR USE OF COLORING MATTER. A person may not apply coloring matter to citrus fruits unless the citrus fruit meets the applicable maturity standards established by rule by the department under Section 94.003(a).

Acts 1981, 67th Leg., p. 1249, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 290, Sec. 8, eff. June 5, 1995.

Sec. 95.017. LABELING. (a) Citrus fruit that is treated with coloring matter shall be marked "Color Added" in letters that are at least three-sixteenths of an inch high.

(b) Subsection (a) of this section is satisfied if no more than 45 percent of a lot of citrus fruit is imperfectly marked.

(c) If citrus fruit that has been treated with coloring matter is marked with a trademark, name, or brand by a two-line die in one operation, "Color Added" shall be placed above the trademark, name, or brand.

(d) A package of citrus fruit that has been treated with coloring matter that is sold, delivered for transportation, or transported shall be marked or securely tagged "Color Added" in letters that are at least three-fourths of an inch high.

(e) The department may adopt rules changing the requirements of this section in order to conform the practice of this state to federal standards.

Acts 1981, 67th Leg., p. 1249, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.018. VARIATION FROM LICENSED COLORING MATTER. A licensee or other person may not manufacture or use coloring matter that contains an ingredient that is prohibited under this chapter or that varies materially from the formula on file with the department.

Acts 1981, 67th Leg., p. 1249, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. INSPECTION

Sec. 95.031. PERIODIC INSPECTION. (a) The department shall periodically:

(1) inspect citrus fruit that has been or is to be treated with coloring matter; and

(2) sample coloring matter on the premises of a licensee under this chapter and analyze the sample.

(b) A person who uses coloring matter on citrus fruit shall periodically request inspection of the citrus fruit to be treated.

(c) In order to perform the inspections required under this section, the department may enter any place within this state where citrus fruit is prepared or colored under this chapter.

Acts 1981, 67th Leg., p. 1249, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.032. CERTIFICATE OF INSPECTION. (a) After completing a citrus fruit inspection, the inspector shall issue a certificate of inspection for all citrus fruit that meets the requirements of this chapter.

(b) A person may not make or issue a false certificate of inspection.

(c) A person may not sell, transport, or deliver for transportation citrus fruit that is not accompanied by a certificate of inspection.

(d) A certificate of inspection shall be in the form provided by the department and shall state that all inspection fees under this chapter have been paid.

Acts 1981, 67th Leg., p. 1250, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.033. NONCOMPLYING CITRUS FRUIT. (a) Citrus fruit that does not pass inspection prior to coloring shall be packed or otherwise disposed of, in the presence of an inspector, without being colored.

(b) The inspector may designate a time within usual packing hours for the disposal of citrus fruit under Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1250, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.034. INSPECTION FEES. The department shall collect a fee, as provided by department rule, from each person who applies coloring matter to citrus fruit.

Acts 1981, 67th Leg., p. 1250, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.41, eff. Sept. 1, 1995.

Sec. 95.035. CONDEMNATION OF UNFIT CITRUS FRUIT. (a) Citrus fruit that has been treated with coloring matter but that on

inspection fails to comply with this chapter or a rule of the department, or is determined to be otherwise unfit for consumption, is condemned as a public nuisance and as detrimental to public health.

(b) The department or the sheriff of the county where the citrus fruit is located shall seize and destroy condemned citrus fruit.

(c) In lieu of seizure and destruction of condemned citrus fruit, the department may allow disposition by the owner in accordance with department rules.

Acts 1981, 67th Leg., p. 1250, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. PENALTIES

Sec. 95.041. OFFENSES. A person commits an offense if the person:

(1) without complying with this chapter, delivers or receives for transportation, transports, or sells citrus fruit that has been treated with coloring matter; or

(2) otherwise violates a provision of this chapter or a rule adopted under this chapter.

Acts 1981, 67th Leg., p. 1251, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 95.042. PENALTY. An offense under Section 95.041 of this code is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1251, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 111, eff. Sept. 1, 1989.

SUBTITLE D. HANDLING AND MARKETING OF HORTICULTURAL PRODUCTS

CHAPTER 101. HANDLING AND MARKETING OF PERISHABLE COMMODITIES

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Handle" means buy for resale, sell, offer to sell, process, broker, or ship for the purpose of selling.

(2) "Packer" means a person who prepares or packs perishable commodities for barter, sale, exchange, or shipment.

(3) "Perishable commodity" means fresh produce grown in Texas and generally considered a perishable vegetable or fruit.

(4) "Person" means an individual, partnership, group of persons, corporation, or business unit.

(5) "Producer" means a person who is engaged in the business of growing or producing any perishable commodity.

(6) "Warehouseman" means a person who receives and stores perishable commodities for compensation.

Acts 1981, 67th Leg., p. 1251, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1999, 76th Leg., ch. 358, Sec. 2, eff. Sept. 1, 1999.

Sec. 101.002. PERISHABLE COMMODITIES. (a) This chapter applies to perishable commodities, whether or not packed in ice or held in cold storage, and does not apply to perishable commodities that have been manufactured into an article of food of a different kind or character.

(b) For purposes of this section, the effects of the following operations do not change a perishable commodity into an article of food of a different kind or character: freezing; water or steam blanching; shelling; chopping; adding color; curing; cutting; dicing; drying for the removal of surface moisture; fumigating; gassing; heating for necessary control; ripening; coloring; removal of seeds, pits, stems, calyxes, husks, pods, rinds, skins, peels, or similar items; trimming; washing with or without chemicals; waxing; adding sugar or other sweetening agents; adding ascorbic acids or other agents used to retard oxidation; mixing with several kinds of sliced, chopped, or diced perishable commodities for packaging in any type of container; or any comparable method of preparation.

Acts 1981, 67th Leg., p. 1252, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 269, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 3, eff. Sept. 1, 1999.

Sec. 101.003. LICENSE REQUIRED. (a) Except as otherwise provided by this section, a person may not handle perishable commodities, as owner, agent, or otherwise, without a license or an identification card issued by the department.

(b) This section does not apply to:

(1) a retailer, unless the retailer:

(A) has annual sales of perishable commodities that comprise 50 percent or more of the retailer's total sales; or

(B) employs a buying agent who buys directly from a producer;

(2) a producer who handles or deals exclusively in the producer's own products;

(3) a person shipping less than six standard boxes of citrus fruit in any one separate shipment;

(4) a person who ships a noncommercial shipment of perishable commodities; or

(5) a person who purchases perishable commodities and pays for the perishable commodities in United States currency before or at the time of delivery or taking possession.

(c) A person who purchases perishable commodities without a license, as owner, agent, or otherwise, does not violate this section if the person obtains a license not later than the 30th day after the date the person first purchases perishable commodities.

Acts 1981, 67th Leg., p. 1252, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 1, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.10, eff. September 1, 2009.

Sec. 101.004. LICENSE OR REGISTRATION CATEGORIES. A person shall apply for a license if the person:

(1) purchases perishable commodities on credit;

(2) takes possession of perishable commodities for consignment or handling on behalf of the producer or owner of the perishable commodities; or

(3) takes possession of perishable commodities for consignment or handling in a manner or under a contract that does not require or result in payment to the producer, seller, or consignor of the full amount of the purchase price in United States currency at the time of delivery or at the time that the perishable commodities

pass from the producer, seller, or consignor to the person.

Acts 1981, 67th Leg., p. 1252, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 2, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 3, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.11, eff. September 1, 2009.

Sec. 101.005. APPLICATION FOR LICENSE. (a) A person required under Section 101.003 of this code to be licensed or registered shall apply to the department on a form furnished by the department. The applicant shall provide the following information and certify that the information provided is true and correct:

(1) the full name of the applicant and whether the applicant is an individual, partnership, corporation, exchange, or association;

(2) the full name and address of the principal business office of the applicant;

(3) the address of the applicant's principal business office in this state;

(4) if the applicant is a foreign corporation, the state in which the corporation is chartered and the name and address of a registered agent in this state for service of legal process; and

(5) the length of time that the applicant has been engaged in business in this state.

(b) In addition to providing the information under Subsection (a) of this section, each applicant shall answer the following questions on the application:

(1) "Have you previously been licensed by this state or the United States Department of Agriculture (USDA) to handle perishable commodities?"

(2) "If you answered that you have been previously licensed, has any license issued to you by this state or the USDA ever been suspended or revoked?"

(3) "If you have answered that a license issued to you by this state or by the USDA has been suspended or revoked, when, where, and for what reason was the license suspended or revoked?"

(c) An applicant's failure to truthfully and accurately provide the information required by Subsections (a) and (b) is a violation for purposes of administrative penalty action and may result in denial of an application.

Acts 1981, 67th Leg., p. 1253, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 2, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 6, eff. Sept. 1, 1999.

Sec. 101.006. LICENSE FEE. (a) Except as otherwise provided by this section, a person applying for a license shall include with the license application a refundable license fee, as provided by department rule.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(7), eff. September 1, 2009.

Acts 1981, 67th Leg., p. 1253, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 995, ch. 235, art. 1, Sec. 8, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4284, ch. 682, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 2, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 5, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 2.43, eff. Sept. 1, 1995; Acts 1999, ch. 358, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(7), eff. September 1, 2009.

Sec. 101.007. ISSUANCE OR REFUSAL OF LICENSE. (a) Except as otherwise provided by this section, the department shall issue a license to an applicant who:

(1) tenders an application;

(2) pays the license fee, if required; and

(3) pays the appropriate fee to the produce recovery fund under Chapter 103 of this code, if required.

(b) If a previous license of the applicant has been or is suspended or has been revoked, the department may not issue or renew a license to the applicant until the department is furnished with satisfactory proof that the applicant is, on the date of application,

qualified to receive the license for which the applicant applied as provided by department rule.

(c) The department may refuse to issue or renew a license under this section if the department determines that a license previously issued to the applicant was revoked or suspended or that the applicant has engaged in conduct for which a license could have been revoked or suspended. In determining whether to refuse to issue or renew a license under this section, the department may consider:

(1) the facts and circumstances pertaining to a prior suspension or revocation;

(2) the financial condition of the applicant as of the date of the application;

(3) any judgment by a court of this state that is outstanding against the applicant and is due and owing to a licensee, grower, or producer of perishable commodities; and

(4) any certified claim against the applicant by a licensee, grower, or producer of perishable commodities that is under consideration by the department.

(d) Before refusing an application for a license under this section, a hearing shall be conducted under Section 12.032 on the license application, and the applicant may appeal the decision in the manner provided for contested cases under Chapter 2001, Government Code.

(e) Repealed by Acts 1995, 74th Leg., ch. 419, Sec. 10.09(13), eff. Sept. 1, 1995.

Acts 1981, 67th Leg., p. 1253, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 739, Sec. 1, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.20, 10.09(13), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 8, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.12, eff. September 1, 2009.

Sec. 101.008. TERM AND RENEWAL OF LICENSE. (a) A license expires one year from the date of issuance.

(b) A license may be renewed by completion of a renewal application form and the payment of the license fee provided for

issuance of the original license.

(c) To renew a license after the license has expired, the applicant must pay a late fee, as provided by Section 12.024 of this code.

Acts 1981, 67th Leg., p. 1254, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 3, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 419, Sec. 2.44, eff. Sept. 1, 1995.

Sec. 101.009. LICENSEE LIST. The department may publish as often as it considers necessary a list in pamphlet form or on the department's Internet website of all persons licensed under this chapter.

Acts 1981, 67th Leg., p. 1254, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.13, eff. September 1, 2009.

Sec. 101.010. TRANSPORTING AGENT OR BUYING AGENT IDENTIFICATION CARD. (a) In accordance with the rules of the department, a license holder may apply to the department for a reasonable number of identification cards for:

(1) transporting agents to act for the license holder in the transporting of perishable commodities; and

(2) buying agents to act for the license holder in any act requiring licensing under Section 101.003 of this code.

(b) The department shall collect a fee, as provided by department rule, for each card and shall issue transporting agent cards in a color different from buying agent cards.

(c) An identification card must bear:

(1) the name of the licensee;

(2) the number of the licensee's license;

(3) the name of the agent; and

(4) a statement that the licensee, as principal, has authorized the agent named on the card to act for and on behalf of the licensee, either as buying agent or transporting agent, as applicable.

(d) A buying agent or transporting agent shall carry the

identification card on the agent's person at all times. On demand of the department or any person with whom the agent is transacting business, the agent shall display the identification card.

(e) If the holder of an identification card ceases to be the agent of the licensee, the agent shall immediately return the card to the department for cancellation.

Acts 1981, 67th Leg., p. 1254, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 67, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 917, Sec. 4, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 6, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 2.45, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 9, eff. Sept. 1, 1999.

Sec. 101.011. LICENSE OR IDENTIFICATION CARD NOT ASSIGNABLE. A license or identification card is not assignable.

Acts 1981, 67th Leg., p. 1255, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1999, 76th Leg., ch. 358, Sec. 10, eff. Sept. 1, 1999.

Sec. 101.012. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE OR IDENTIFICATION CARD. (a) The department shall revoke, modify, or suspend a license or identification card, assess an administrative penalty, place on probation a person whose license or identification card has been suspended, or reprimand a licensee or the transporting or buying agent of a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a suspension of a license or identification card is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license or identification card, the person is entitled to a

hearing conducted under Section 12.032. The decision is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1255, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 112, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.21, eff. Sept. 1, 1995.

Sec. 101.013. PAYMENT OF PURCHASE PRICE ON DEMAND. (a) If a licensee or a person required to be licensed causes a producer, seller, or owner, or an agent of a producer, seller, or owner, to part with control or possession of all or any part of the person's perishable commodities and agrees by contract of purchase to pay the purchase price on demand following delivery, the licensee or person required to be licensed shall make payment immediately on demand.

(b) If a person makes demand for the purchase price in writing, the mailing of a registered letter that makes the demand and is addressed to the licensee or person required to be licensed at their business address is prima facie evidence that demand was made at the time the letter was mailed.

(c) If the producer, seller, owner, or agent waives the right to payment of purchase price on demand, the contract for the handling, purchase, or sale of the perishable commodities must be in writing. The parties shall prepare the contract in duplicate and set out in the contract the full details of the transaction. If the contract does not specify the time and manner of settlement, the licensee shall pay the full amount called for by the contract directly to the producer, seller, owner, or agent before the 31st day following the day of delivery of the perishable commodities into the licensee's control.

Acts 1981, 67th Leg., p. 1255, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1999, 76th Leg., ch. 358, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.14, eff. September 1, 2009.

Sec. 101.014. COMMISSION OR SERVICE CHARGE IN CONTRACT. If a licensee or a person required to be licensed handles perishable commodities by guaranteeing a producer or owner a minimum price and handles the perishable commodities on the account of the producer or owner, the licensee or person required to be licensed shall include in the contract with the producer or owner the maximum amount that the licensee or person required to be licensed will charge for commission, service, or both, in connection with the perishable commodities handled.

Acts 1981, 67th Leg., p. 1256, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1999, 76th Leg., ch. 358, Sec. 12, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.15, eff. September 1, 2009.

Sec. 101.015. SETTLEMENT ON GRADE AND QUALITY. (a) Except as otherwise provided by this section, a licensee or a person required to be licensed shall settle with the producer or seller of perishable commodities on the basis of the grade and quality that is referred to in the contract under which the licensee or person required to be licensed obtained possession or control of the perishable commodities.

(b) If the perishable commodities have been inspected by a state or federal inspector in this state and found to be of a different grade or quality than that referred to in the contract, the licensee or person required to be licensed shall settle with the producer or seller of the perishable commodities on the basis of the grade and quality determined by the inspector.

(c) This section does not prevent parties, instead of an inspection, from agreeing in writing that the grade or quality of the perishable commodities were different from that referred to in the contract.

(d) Failure of a licensee to settle with a producer or seller on grade and quality in the manner provided by this section is a ground for revocation of the licensee's license.

Acts 1981, 67th Leg., p. 1256, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1999, 76th Leg., ch. 358, Sec. 13, eff. Sept. 1,

1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.16, eff. September 1, 2009.

Sec. 101.0151. BUYING OR SELLING BY WEIGHT. A licensee or a person required to be licensed who buys or sells perishable commodities by weight shall weigh or have the perishable commodities weighed on scales that meet state requirements.

Added by Acts 1999, 76th Leg., ch. 358, Sec. 14, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.17, eff. September 1, 2009.

Sec. 101.016. RECORDS OF PURCHASE. (a) A licensee or a person required to be licensed or a packer, processor, or warehouseman may not receive or handle perishable commodities without requiring the person from whom the perishable commodities are purchased or received to furnish a statement in writing showing:

(1) the owner of the perishable commodities;

(2) the grower of the perishable commodities;

(3) the approximate location of the land on which the perishable commodities were grown;

(4) the date the perishable commodities were gathered; and

(5) by whose authority the perishable commodities were gathered.

(b) The licensee or person required to be licensed, packer, processor, or warehouseman shall keep records of statements furnished under Subsection (a) in a permanent book or folder for a minimum of three years from the date of the transaction and shall make the records available for inspection by any interested party.

(c) The licensee or person required to be licensed, packer, handler, or warehouseman shall:

(1) prepare a receipt detailing the quantity of perishable commodities received from the producer or owner at the time of receipt of the commodities; and

(2) on request, provide the receipt to the producer or

owner.

(d) The department periodically may investigate licensees, persons required to be licensed, or persons alleged to be selling or purchasing perishable commodities in violation of this chapter and, without notice, may require evidence of purchase of any perishable commodities in a person's possession or past possession.

Acts 1981, 67th Leg., p. 1256, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1999, 76th Leg., ch. 358, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.18, eff. September 1, 2009.

Sec. 101.017. RECORD OF SALE. (a) Except for a retailer, a licensee or a person required to be licensed shall maintain for each sale a complete and accurate record showing:

(1) the date of sale of the perishable commodities;

(2) the person to whom the perishable commodities were sold;

(3) the grade and selling price of the perishable commodities; and

(4) an itemized statement of expenses of any kind or character incurred in the sale or handling of the perishable commodities, including the amount of the commission to the licensee or person required to be licensed.

(b) On demand of the department or of an owner, seller, or agent of the owner or seller, the licensee or person required to be licensed shall furnish the information demanded before the 11th day following the date of demand.

(c) A licensee or a person required to be licensed shall maintain the information required to be kept by this section for at least three years after the date of sale.

Acts 1981, 67th Leg., p. 1256, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1999, 76th Leg., ch. 358, Sec. 16, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.19, eff. September 1, 2009.

Sec. 101.018. DEPARTMENT ENFORCEMENT. (a) For the purpose of enforcing this chapter, the department shall, on its own initiative or on receipt of a verified complaint, investigate all alleged violations of this chapter.

(b) For the purpose of conducting an investigation under this section, the department is entitled to free and unimpeded access at all times to all books, records, buildings, yards, warehouses, storage facilities, transportation facilities, and other facilities or places in which perishable commodities are kept, stored, handled, processed, or transported.

(c) The department is entitled to examine any portion of the ledger, books, accounts, memoranda, documents, scales, measures, or other matters, objects, or persons relating to a violation under investigation.

(d) Failure to provide access to records for purposes of examination, as required by Subsections (b) and (c), is a violation for purposes of assessment of administrative penalties.

(e) Repealed by Acts 1989, 71st Leg., ch. 230, Sec. 131(4), eff. Sept. 1, 1989.

Acts 1981, 67th Leg., p. 1257, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 131(3), (4), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 358, Sec. 17, eff. Sept. 1, 1999.

Sec. 101.0185. CIVIL PENALTY; INJUNCTION. (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.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a

local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 113, eff. Sept. 1, 1989.

Sec. 101.019. VENUE OF CIVIL OR CRIMINAL ACTION. The venue of a civil action or criminal prosecution instituted under this chapter is in the county in which the violation occurred, is occurring, or is threatened or in which the perishable commodities were received by the licensee, packer, or warehouseman.

Acts 1981, 67th Leg., p. 1257, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 114, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 358, Sec. 18, eff. Sept. 1, 1999.

Sec. 101.020. PENALTIES. (a) A person commits an offense if the person:

(1) acts in violation of Section 101.003 by not obtaining a license or registration or after receiving notice of cancellation of a license or registration;

(2) acts or assumes to act as a transporting agent or buying agent:

(A) without first obtaining an identification card; or

(B) after receiving notice of cancellation of an identification card;

(3) as a transporting agent or buying agent, fails and refuses to turn over to the department an identification card in accordance with Section 101.010(e);

(4) as a license holder or a person required to be licensed, fails to furnish information under Section 101.017 before

the 11th day following the date of demand;

(5) as a license holder or a person required to be licensed, fails to settle with a producer or seller on the grade and quality of perishable commodities in the manner provided by Section 101.015;

(6) as a license holder or a person required to be licensed, transporting agent, or buying agent, violates a provision of this chapter;

(7) as a license holder or a person required to be licensed, buys or sells perishable commodities by weight and does not have the perishable commodities weighed on scales that meet state requirements;

(8) fails to prepare and maintain records required by Sections 101.016, 101.017, and 101.018; or

(9) fails to provide records as required by Sections 101.016 and 101.018.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $500.

(c) A person commits a separate offense for each day the person acts in violation of Section 101.003 of this code without first obtaining a license or violates Subsection (a)(2) or (a)(3) of this section.

Acts 1981, 67th Leg., p. 1257, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1985, 69th Leg., ch. 917, Sec. 5, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 7, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 19, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.20, eff. September 1, 2009.

Sec. 101.021. CONFLICT WITH ANTITRUST LAWS. This chapter does not affect the application of Chapter 15, Business & Commerce Code. If any provision of this chapter is held to conflict with that chapter, the entire chapter is void.

Acts 1981, 67th Leg., p. 1258, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 102. HANDLING AND MARKETING OF CITRUS FRUIT

SUBCHAPTER B. TRANSPORTATION OF CITRUS FRUIT

Sec. 102.101. IDENTIFICATION SIGNS. (a) A motor vehicle, including a truck or tractor, that hauls citrus fruit in bulk or in open containers for commercial purposes on the highways of this state must be identified by signs showing:

(1) the name of the person who owns the vehicle; or

(2) the name of the person who leases or operates the vehicle.

(b) If a person licensed under Subchapter A of this chapter is the owner or operator of the vehicle, each identification sign must also show "Licensed Citrus Fruit Dealer" under the name of the person.

(c) The lettering on each identification sign must be at least three inches in height.

(d) An identification sign must appear on both sides of the vehicle or on both the front and the rear and must be affixed permanently or in another manner in which it may not easily be removed. If both a tractor and a trailer or two units are used in hauling the citrus fruit, both the tractor and the trailer or both units must be labeled with identification signs in the manner required by this subsection.

Acts 1981, 67th Leg., p. 1266, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.102. CERTIFICATE. A person who operates a motor vehicle, including a truck or tractor, or a motor vehicle and a trailer for hauling citrus fruit in bulk or in open containers for commercial purposes on the highways of this state shall, when operating the vehicle, have on his or her person a certificate or other document showing:

(1) the approximate amount of citrus fruit being hauled;

(2) the name of the owner of the citrus fruit; and

(3) the origin of the citrus fruit.

Acts 1981, 67th Leg., p. 1266, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.103. EXCEPTION. This subchapter does not apply to citrus fruit being hauled from the farm or grove to market or the place of first processing by the producer of the citrus fruit

operating the producer's vehicle or by an employee of the producer operating a vehicle owned by the producer.

Acts 1981, 67th Leg., p. 1266, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.104. PENALTY. (a) A person commits an offense if the person:

(1) operates a motor vehicle or a motor vehicle and trailer not identified in accordance with Section 102.101 of this code; or

(2) operates a motor vehicle or motor vehicle and trailer without a certificate or document required by Section 102.102 of this code.

(b) An offense under this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1266, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 118, eff. Sept. 1, 1989.

Sec. 102.1045. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter 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.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the

alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 119, eff. Sept. 1, 1989.

SUBCHAPTER C. CITRUS MARKETING AGREEMENTS AND LICENSES

Sec. 102.151. POLICY. The unreasonable waste and inefficient use of the citrus resources, caused by the marketing within this state of greater quantities of fresh citrus fruit than are reasonably necessary to supply the demands of the market, are not in the public interest. The difficulty inherent in an attempt of individuals to correlate within a reasonable degree the citrus production to current demand creates chaotic economic conditions in the citrus areas of the state of such severity as to imperil the ability of citrus producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase the tax burden of other taxpayers for the same purposes, and renders it impossible for producers to be reasonably assured of an adequate standard of living for themselves and their families. In the interest of the public welfare and general prosperity of the state, the unreasonable waste and inefficient use of citrus resources involved in the marketing of citrus fruit in this state should be eliminated, while at the same time preserving to citrus producers in the area covered by this subchapter an equality of opportunity.

Acts 1981, 67th Leg., p. 1267, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.152. DEFINITIONS. In this subchapter:

(1) "Citrus fruit" means grapefruit, oranges, and tangerines.

(2) "Handler" means a person who packs or ships citrus fruit or causes citrus fruit to be packed or shipped in intrastate commerce.

(3) "Intrastate commerce" means all commerce other than that which is in interstate commerce or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce.

(4) "Person" means an individual, corporation, or

association.

(5) "Producer" means a person who is engaged in the production of citrus fruit in this state for commercial purposes or who is a substantial stockholder in a corporation engaged in the production of citrus fruit in this state for commercial purposes.

(6) "Ship" means convey or cause to be conveyed in intrastate commerce by rail, boat, truck, or other means, not including parcel post or express, whether as owner, agent, or otherwise.

(7) "Shipment" means the loading into a car or other conveyance for transportation in intrastate commerce.

(8) "Variety" means the following classifications or groups of citrus fruit:

(A) oranges:

(i) early season oranges; and

(ii) valencias, including Lou Gim Gongs;

(B) grapefruit:

(i) Marsh and other seedless grapefruits, except pinks;

(ii) Duncan and other seeded grapefruits, except pinks;

(iii) seeded pinks; and

(iv) seedless pinks; and

(C) tangerines and temple oranges grouped as one variety.

Acts 1981, 67th Leg., p. 1267, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.153. LIMITED APPLICATION OF SUBCHAPTER. This subchapter applies only to areas of three citrus fruit producing counties whose boundaries are contiguous and whose aggregate population according to the last preceding federal census is not less than 165,043. This subchapter does not apply to citrus fruit grown in other areas of this state.

Acts 1981, 67th Leg., p. 1268, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.154. MARKETING AGREEMENTS AND LICENSES. In accordance with this subchapter, the department may execute marketing agreements

and issue licenses to persons engaged in intrastate commerce transactions in the marketing, processing, packing, shipping, handling, or distributing of citrus fruit.

Acts 1981, 67th Leg., p. 1268, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.155. HEARING. (a) On its own motion or on application of a producer or handler of citrus fruit, the department may conduct a hearing on the execution of a marketing agreement or on the issuance of a license if the department has reason to believe that the marketing agreement or license will tend to effectuate the policy of this subchapter.

(b) The department shall conduct a hearing under this section in the area subject to this subchapter and shall within a reasonable time make the evidence and exhibits offered at the hearing available at a central point to any interested party. The department shall produce a transcript of the hearing and make it available to any interested party.

Acts 1981, 67th Leg., p. 1268, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.156. FINDINGS. (a) Following a hearing, the department may execute a marketing agreement or issue a license only if it finds that:

(1) the supply of a citrus fruit available for marketing exceeds or is likely to exceed the demand for the fruit at prices that will provide a reasonable return to representative producers of that fruit;

(2) the return to producers of the citrus fruit will tend to be increased through the operation of the marketing plan;

(3) the marketing plan may be operated without permitting unreasonable profits to producers of the citrus fruit and without unreasonably enhancing prices of the citrus fruit to consumers; and

(4) the marketing plan will tend to advance public welfare and conserve the agricultural wealth of the state by preventing threatened economic or agricultural waste and will tend to prevent chaotic marketing of the citrus fruit.

(b) The findings of the department, and the administration of any marketing agreement or license, shall be based on relevant

considerations, including:

(1) the quantity of the several grades, varieties, and qualities of the citrus fruit under consideration and available for distribution to consumers in the marketing season during which the program is to be effective;

(2) the quantity of the several grades, varieties, and qualities of the citrus fruit required by consumers during the marketing season during which the program is to be effective;

(3) the cost of production of the citrus fruit;

(4) the general purchasing power of consumers of the citrus fruits;

(5) the general level of prices of commodities that farmers buy; and

(6) the general level of prices of other commodities that compete with or are used as substitutes for the citrus fruit.

Acts 1981, 67th Leg., p. 1268, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.157. TERMS OF AGREEMENT OR LICENSE. (a) Any marketing agreement executed or license issued may:

(1) limit or provide a method for limiting the total quantity of any grade, variety, size, or quality of citrus fruit that may be produced during one or more specified periods and marketed in or transported to a market in intrastate commerce;

(2) allot or provide a method for allotting the amount of citrus fruit or any grade, variety, size, or quality of citrus fruit that each handler may market in intrastate commerce;

(3) determine or provide a method for determining the existence and extent of a surplus of a citrus fruit or of any grade, variety, size, or quality of a citrus fruit, provide for the control and disposition of that surplus in a manner that does not burden or obstruct interstate or foreign commerce, and equalize the burden of a surplus elimination or control among the producers and handlers of the citrus fruit;

(4) provide for administrative committees under Section 102.158 of this code; and

(5) provide other terms or conditions incidental to and consistent with this section.

(b) If the marketing agreement or license allots or provides a

method for allotting the amount of a citrus fruit that a handler may handle, the marketing agreement or license must:

(1) be under a uniform rule based on one or both of the following:

(A) the amount of the citrus fruit or grade, variety, size, or quality of the citrus fruit that each handler has available for current shipment; and

(B) the amount shipped by each handler in a prior representative period, as determined by the department; and

(2) equitably apportion among all the handlers the total quantity of the citrus fruit or any grade, variety, size, or quality of the citrus fruit to be marketed in or transported to markets in intrastate commerce.

(c) A marketing agreement or license may include one or more of the terms and conditions under Subsection (a) of this section, but may not include others.

Acts 1981, 67th Leg., p. 1269, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.158. ADMINISTRATIVE COMMITTEE. (a) A marketing agreement or license may authorize the department to select and define the powers and duties of one or more administrative committees to administer the program.

(b) The department may authorize an administrative committee to:

(1) administer the license in accordance with its terms and provisions;

(2) adopt rules to effectuate the terms and provisions of the license;

(3) receive, investigate, and report to the department complaints of violations of the license;

(4) recommend to the department amendments to the license; and

(5) collect assessments in accordance with Section 102.159 of this code.

(c) The department may require an administrative committee to file reports of the activities and proceedings of the committee.

Acts 1981, 67th Leg., p. 1269, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.159. ASSESSMENT. (a) If an administrative committee is authorized to collect an assessment, for each marketing season or year in which the marketing agreement or license is effective the committee shall collect from each handler an assessment representing the handler's pro rata share of the estimated expenses incurred by the department in conducting hearings and incurred by the administrative committee in administering the agreement or license during the marketing season or year. The department shall estimate those expenses after each administrative committee submits to the department a proposed budget.

(b) An assessment levied under this section is a personal debt of each person assessed and is immediately due and payable to the administrative committee charged with collection. With the approval of the department, an administrative committee may sue in its own name in a court of competent jurisdiction for the collection of an assessment.

(c) In accordance with the rules of the department, each administrative committee charged with the collection of assessments shall collect, report, and pay monthly to the department the amount of the assessments that the department determines will be necessary to defray the department's cost of administering the marketing agreement or license during the subsequent month.

(d) The department shall submit to each administrative committee charged with collecting assessments quarterly statements reporting the receipts and expenditures during the quarter in connection with the administration of the appropriate marketing agreement or license.

(e) An administrative committee may expend assessments for the purposes set forth in the marketing agreement or license under which the assessment is collected. The committee shall keep a full and complete record of those expenditures and the department is entitled to access to that record at any time.

(f) An administrative committee shall retain custody of assessments that are not paid to the department or expended under Subsection (e) of this section. At the close of the marketing season or year for which an assessment is collected, the committee shall return to each handler a pro rata share of assessments that are not paid to the department or expended by the committee.

Acts 1981, 67th Leg., p. 1270, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.160. APPROVAL BY PRODUCERS AND HANDLERS. (a) A license may not be issued until:

(1) assented to in writing by:

(A) 51 percent of the total number of handlers of the citrus fruit; or

(B) the handlers of at least 51 percent of the total volume of the citrus fruit covered by the license; and

(2) the department determines that the issuance of the license is approved by:

(A) 66-2/3 percent of the producers who, during a representative period determined by the department, have been engaged in the production of the citrus fruit in commercial quantities in the area covered by the license; or

(B) the producers who, during the representative period, produced for market at least 66-2/3 percent of the volume of the citrus fruit produced for market in the area covered by the license.

(b) In determining the representative period under Subsection (a)(2) of this section, the department may select the crop season prior to the holding of a hearing on the issuance of the license or any other period that the department determines to be representative.

(c) In determining the approval of producers under Subsection (a)(2) of this section, the department shall determine the approval or disapproval of the producers in respect to the issuance of any license or order or any term or condition of a license or order. The department shall consider the approval or disapproval of any cooperative association of producers that is engaged in marketing the citrus fruit for producers or is rendering service to or advancing the interest of those producers as the approval or disapproval of the producers who are members of, stockholders in, or under contract with the association. Approval by an association may be executed in the name of the association and is not required to set forth the names of the producers represented by the association.

Acts 1981, 67th Leg., p. 1270, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.161. UNIFORM LICENSES. If a license is issued under

this subchapter, the department shall issue an identical license to each handler, processor, or distributor of the same class.

Acts 1981, 67th Leg., p. 1271, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.162. FEES. Each person applying for a marketing agreement or license shall submit to the department a filing fee, as provided by department rule, and a deposit in an amount that the department considers sufficient and necessary to defray the expenses of preparing and making effective the marketing agreement or license.

Acts 1981, 67th Leg., p. 1271, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.49, eff. Sept. 1, 1995.

Sec. 102.163. AMENDMENT OF MARKETING AGREEMENT OR LICENSE. (a) If the department has reason to believe that an amendment of a marketing agreement or license is necessary or desirable to achieve the policy of this subchapter, the department shall conduct a hearing on the proposed amendment in the manner provided for the original hearing on execution of the agreement or issuance of the license.

(b) Notice of a hearing under this section must refer to the marketing agreement to be amended by name and date of execution and must refer to the license to be amended by name and date of adoption.

(c) The department may adopt an amendment under this section if it finds that the proposed amendment:

(1) will not prevent the marketing agreement or license from meeting the requirements of Section 102.156 of this code; and

(2) will tend to facilitate the administration of the marketing agreement or license or will enable the marketing agreement or license to better meet the requirements of Section 102.156 of this code.

(d) A marketing agreement or license is not affected by a negative department finding under Subsection (c) of this section.

(e) In considering an amendment under this section, the department shall consider the evidence presented at the original hearing or a hearing on a previously proposed amendment.

(f) An amendment under this section is not effective until approved by the handlers and producers in the manner provided by

Section 102.160 of this code.

Acts 1981, 67th Leg., p. 1271, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.164. SUSPENSION OR TERMINATION OF MARKETING AGREEMENT OR LICENSE. (a) The department shall suspend for a specified period or terminate the operation of a marketing agreement, a license, or a provision of a marketing agreement or license if the department finds:

(1) following investigation, that the agreement, license, or provision obstructs or does not tend to effectuate the policy of this subchapter; or

(2) that termination of the agreement, license, or provision is favored by a majority of the producers who, during a representative period determined by the department:

(A) have been engaged in the production of the citrus fruit in the area covered by the agreement or license; and

(B) produced more than 66-2/3 percent of the volume of the citrus fruit that was produced for market within the area of the state covered by this subchapter or was produced within the area of this state covered by this subchapter for market elsewhere.

(b) Termination of a marketing agreement, a license, or a provision of a marketing agreement or license is effective only if announced on or before the end of the current marketing period specified in the agreement or license.

Acts 1981, 67th Leg., p. 1272, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.165. SUSPENSION OR REVOCATION OF INDIVIDUAL LICENSE. After notice and opportunity for a hearing, the department may suspend or revoke the license of any person who violates a provision of the license.

Acts 1981, 67th Leg., p. 1272, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.166. RECORDS. (a) Each person subject to a marketing agreement or license shall:

(1) maintain records reflecting the person's operation

under the agreement or license;

(2) permit the department to inspect those records; and

(3) furnish to the department information requested by the department relating to the person's operations under the agreement or license.

(b) Except as otherwise provided by this subsection, information obtained under this section is confidential and may not be disclosed to any person. The information may be disclosed to a person with a similar right to obtain the information or to an attorney employed by an administrative committee to give legal advice on the information. In addition, the information may be disclosed in response to a court order.

Acts 1981, 67th Leg., p. 1272, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.167. POWERS AND DUTIES OF THE DEPARTMENT. (a) The department may adopt rules and issue orders as necessary or desirable to carry out this subchapter.

(b) The department may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of relevant books, records, or documents. A person may not be excused from attending and testifying or from producing documentary evidence before the department in obedience to a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. An individual may not be prosecuted or subjected to any penalty or forfeiture because of any transaction, matter, or thing concerning which the person is required to testify or produce evidence before the department in obedience to a subpoena. An individual so testifying is not exempt from prosecution and punishment for perjury committed in that testimony.

(c) The department may permit an administrative committee to use the various employees or officers of the department in carrying out this subchapter or a marketing agreement or license under this subchapter.

(d) The department may confer and cooperate with the authority of another state or the United States in order to secure uniformity in the administration of federal and state marketing agreements, standards, licenses, orders, or rules. The department may conduct

hearings jointly with the United States Department of Agriculture.

Without reference to the amendment of this subsection, this subsection was repealed by Acts 2013, 83rd Leg., R.S., Ch. 446 (S.B. 772), Sec. 4(2), eff. June 14, 2013.

(e) Not later than December 1 before the first day of each regular session of the legislature, the department shall submit to the governor a full report of transactions under this subchapter during the preceding biennium. The report must include a complete statement of receipts and expenditures under this subchapter during the biennium.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 446, Sec. 4(2), eff. June 14, 2013.

Acts 1981, 67th Leg., p. 1272, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 446 (S.B. 772), Sec. 4(2), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 2, eff. September 1, 2013.

Sec. 102.168. ENFORCEMENT BY CIVIL SUIT. (a) The state or, with the approval of the department, an administrative committee may sue a person who:

(1) wilfully exceeds any quota, allotment, or salable percentage fixed for the person under a license issued or rule adopted by the department;

(2) makes a shipment without first obtaining a required allotment or quota or qualifying to ship the person's salable percentage; or

(3) knowingly participates or aids in activities under Subdivision (1) or (2) of this subsection.

(b) If successful in a suit under Subsection (a) of this section, the state or administrative committee is entitled to recover an amount equal to three times the current market value of the citrus fruit excess or the citrus fruit shipment, as applicable. Funds recovered in a suit under this section shall be used in the administration of the license involved in the suit.

Acts 1981, 67th Leg., p. 1273, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.169. INJUNCTION. The attorney general or a district or county attorney on the attorney's own initiative may, or in response to a complaint shall, investigate violations of this subchapter. If the attorney believes that a violation has occurred, the attorney may sue in the name of the state for an injunction against a person who:

(1) is violating a provision of a marketing agreement, a license, or an order or rule of the department to which the person is subject; or

(2) engages in transactions mentioned in and regulated by a license during suspension or after revocation of the person's license.

Acts 1981, 67th Leg., p. 1273, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.170. ATTORNEY'S FEES; VENUE; CUMULATIVE REMEDIES. (a) In an action brought under Section 102.168 or 102.169 of this code, the judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff a reasonable attorney's fee and all costs of suit. An action under those sections may be brought in the county where the defendant resides or where the act, omission, or part of the act or omission occurred.

(b) The remedies and penalties of this subchapter are cumulative and action or prosecution under a section of this subchapter does not prohibit action or prosecution under another section of this subchapter or any other civil or criminal law.

Acts 1981, 67th Leg., p. 1274, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 102.171. PENALTY. (a) A person commits an offense if the person:

(1) violates a provision of a marketing agreement or license to which the person is subject; or

(2) engages in a transaction mentioned in and regulated by a license to which the person is subject during the suspension or after the revocation of the person's license.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense for each day during which the person acts under Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1274, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 120, eff. Sept. 1, 1989.

Sec. 102.172. CONFLICT WITH ANTITRUST LAW. If any provision of this subchapter conflicts with a provision of the civil or criminal antitrust law of this state, the antitrust law prevails.

Acts 1981, 67th Leg., p. 1274, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 103. PRODUCE RECOVERY FUND

Sec. 103.001. DEFINITIONS. In this chapter:

(1) "Board" means the Produce Recovery Fund Board.

(2) "Fund" means the produce recovery fund.

Acts 1981, 67th Leg., p. 1274, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 103.002. FUND. (a) The produce recovery fund is a special trust fund with the comptroller administered by the department, without appropriation, for the payment of claims against license holders, retailers, and persons required to be licensed under Chapter 101.

(b) Fees collected under Section 101.008 or 103.011 and 50 percent of the fines collected under Section 101.020 or 103.013 shall be deposited in the fund.

(c) The clerk of the county court or county court-at-law and the custodian of the county treasury funds shall keep separate records of all fines collected under Section 101.020 or 103.013. On the first day of each January, April, July, and October, the custodian of the funds in the county treasury shall remit 50 percent of the fines collected under those sections to the comptroller of public accounts and the comptroller shall deposit that amount in the fund.

(d) No more than 10 percent of the fund may be expended during any one year for administration of the claims process.

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

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 986, ch. 235, art. 1, Sec. 2(b), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 11, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 2.11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 358, Sec. 20, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.21, eff. September 1, 2009.

Sec. 103.003. BOARD. (a) The Produce Recovery Fund Board is composed of five members appointed by the commissioner. Two members must be producers, one must be a license holder licensed under Chapter 101, and two must be members of the general public.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 4.09(2), eff. September 1, 2009.

(c) Members of the board serve for staggered terms of six years with the term of office expiring on January 31 of odd-numbered years.

(d) Members of the board are entitled to per diem and reimbursement for actual expenses incurred while carrying out their duties.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) The commissioner shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the commissioner.

(g) The board is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(c), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 12, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 419, Sec. 1.21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1170, Sec. 35.01, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.06, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.09(2), eff. September 1, 2009.

Sec. 103.004. DUTIES OF THE BOARD. (a) The board shall:

(1) advise the department on all matters relating to the fund, including the fund's budget and the revenues necessary to accomplish the purposes of the fund;

(2) advise the department in the adoption of rules relating to the payment of claims from the fund and to the administration of the fund; and

(3) conduct adjudicative hearings on disputed claims presented for payment from the fund.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(c) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.22, eff. Sept. 1, 1995.

Sec. 103.005. INITIATION OF CLAIM. (a) A person who deals with a license holder or a person required to be licensed under Chapter 101 in the purchasing, handling, selling, and accounting for sales of perishable commodities and who is aggrieved by an action of the license holder or person required to be licensed as a result of a violation of terms or conditions of a contract made by the license holder or person required to be licensed for the sale of Texas-grown produce may initiate a claim against the fund by filing with the department:

(1) a sworn complaint against the license holder or person required to be licensed; and

(2) a filing fee, as provided by department rule.

(b) A complaint and the fee under Subsection (a) must be filed

on or before the second anniversary of the date that payment was due, or recovery from the fund is barred.

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 13, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 15, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 2.50, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 22, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 196, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.22, eff. September 1, 2009.

Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For purposes of this chapter, the amount due an aggrieved party by a license holder or a person required to be licensed is not affected by a final judgment of a bankruptcy court that releases the license holder or person required to be licensed from the legal duty to satisfy the claim.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 121, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 269, Sec. 16, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.23, eff. September 1, 2009.

Sec. 103.006. INVESTIGATION; HEARING ON CLAIM. (a) After a claim is initiated, the department shall investigate the complaint and determine the amount due the aggrieved party. If the amount determined by the department is disputed by the license holder, a person required to be licensed, or the aggrieved party, the board shall conduct a hearing on the claim and determine the amount due the aggrieved party.

(b) A quorum of the board must be present in order to conduct a hearing. The board shall conduct the hearing and a party not satisfied with the decision of the board may appeal in the manner provided for contested cases under Chapter 2001, Government Code.

(c) A hearing on a claim may be conducted at any department

district office.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(d), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 14, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 269, Sec. 17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.24, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.24, eff. September 1, 2009.

Sec. 103.007. PAYMENT OF CLAIM. (a) If the amount determined by the department's investigation to be due the aggrieved party is not disputed by the license holder, a person required to be licensed, or the aggrieved party, the department shall pay the claim within the limits prescribed by this chapter.

(b) If a hearing is held on a disputed amount, the department shall pay to the aggrieved party the amount determined by the board, within the limits prescribed by this chapter.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 18, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.25, eff. September 1, 2009.

Sec. 103.008. LIMITS ON CLAIM PAYMENTS. (a) In making payments from the fund the department may pay the aggrieved party the full value of their validated claim, subject to Subsections (b) and (d).

(b) The total payment of all claims arising from the same contract with a license holder or a person required to be licensed may not exceed $50,000.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(8), eff. September 1, 2009.

(d) Payment of a claim filed against a person who is not licensed in violation of Chapter 101 shall be limited to 80 percent

of the recovery prescribed under this section.

(e) Payments from the fund during a fiscal year may not exceed two times the average amount of money deposited into the fund during the previous three fiscal years, except that surplus funds remaining at the end of each fiscal year are available for the payment of claims during any succeeding year. In no case shall payment of claims cause the balance of the fund to fall below $100,000.

(f) If a license holder or a person required to be licensed owes money to the produce recovery fund at the time the license holder or person required to be licensed makes a claim against the fund, the department shall offset the amount owed to the fund from the amount dispensed.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 19, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 23, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.26, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(8), eff. September 1, 2009.

Sec. 103.009. REIMBURSEMENT OF FUND AND PAYMENT TO COMPLAINING PARTY BY LICENSEE. (a) If the department pays a claim against a license holder or a person required to be licensed, the license holder or person required to be licensed shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the department; and

(2) immediately pay the aggrieved party any amount due that party or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the department.

(b) Payments made to the fund or to the aggrieved party under this section shall include interest at the rate of eight percent a year.

(c) If the license holder or person required to be licensed does not reimburse the fund or pay the aggrieved party, or does not agree to do so, in accordance with this section, the department shall

issue an order canceling the license and may not issue a new license to or renew the license of that person for four years from the date of cancellation. If the license holder or person required to be licensed is a corporation, an officer or director of the corporation or a person owning more than 25 percent of the stock in the corporation may not be licensed under Chapter 101 during the four-year period in which the corporation is ineligible for licensing.

(d) Subsections (a) and (b) do not apply to a license holder or a person required to be licensed who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.

(e) The amount to be reimbursed under this section shall be one and one-half times the amount of the claim paid if the person required to reimburse the department was not licensed on the date on which the transaction forming the base of the claim occurred.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 122, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 269, Sec. 20, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 24, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.27, eff. September 1, 2009.

Sec. 103.010. SUBROGATION OF RIGHTS. If the department pays a claim against a license holder or a person required to be licensed, the department is subrogated to all rights of the aggrieved party against the license holder or person required to be licensed to the extent of the amount paid to the aggrieved party.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 21, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.28, eff. September 1, 2009.

Sec. 103.011. FEE. (a) Except as otherwise provided by this

section, a license holder licensed under Chapter 101 shall pay an annual fee to the fund as provided by department rule.

(b) A person registered as a marketing association organized under Chapter 52 that handles citrus fruit only for its members is exempt from payment of the fee under this section.

(c) The fee required by Subsection (a) is in addition to any licensing fee paid and is due at the time of making the license application. The department may not issue a license to a person who fails to pay the fee.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 269, Sec. 22, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 2.51, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 25, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.29, eff. September 1, 2009.

Sec. 103.012. RULES. With the advice of the board, the department shall adopt rules, consistent with this chapter, for the payment of claims from the fund.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 103.013. PENALTY FOR FAILURE TO PAY FEE. (a) A person commits an offense if the person acts or assumes to act as a license holder under Chapter 101 without first paying the annual fee required by Section 103.011.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense for each day the person acts in violation of this section.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(e), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 16, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 23, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 26, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.30, eff.

September 1, 2009.

Sec. 103.014. PENALTY FOR FALSE CLAIMS. (a) A person commits an offense if, with intent to obtain a benefit for himself or to harm another, he:

(1) institutes a claim under this chapter in which he knows he has no interest; or

(2) institutes any suit or claim under this chapter that he knows is false.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(f), eff. Sept. 1, 1983.

Sec. 103.015. CIVIL PENALTY; INJUNCTION. (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.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 123, eff. Sept. 1, 1989.

Sec. 103.016. BOARD CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Sec. 103.017. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 103.003;

(2) does not maintain during service on the board the qualifications required by Section 103.003;

(3) violates a prohibition established by Section 103.016;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by

the fact that it is taken when a ground for removal of a board member exists.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 4.09(2), eff. September 1, 2009.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.09(2), eff. September 1, 2009.

Sec. 103.018. QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Sec. 103.019. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the produce recovery fund;

(6) the requirements of:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code; and

(C) Chapter 2001, Government Code;

(7) the requirements of the conflict of interest laws and other laws relating to public officials; and

(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.07, eff. September 1, 2009.

SUBTITLE E. PROCESSING AND SALE OF FIBER PRODUCTS
CHAPTER 111. GINNING AND COMPRESSING COTTON

Sec. 111.001. GINNERS; PUBLIC USE. A person who operates a gin in this state for ginning cotton for commercial purposes shall be known as a ginner and is charged with the public use.

Acts 1981, 67th Leg., p. 1298, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 111.002. GINNER'S RECORD. Each ginner shall keep in a book a public record of all cotton brought to the ginner for ginning. The record shall show:

(1) the amount of cotton received;

(2) the date on which the cotton was received;

(3) the name of the person who brought the cotton to the gin; and

(4) the name of each person claiming to own the cotton.

Acts 1981, 67th Leg., p. 1298, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 111.003. IDENTIFICATION OF BALES. (a) Each ginner shall mark each bale of cotton with the following:

(1) "B_____", filling the blank with the number of the bale as shown on the books of the gin;

(2) the initials of each party who claims to own the cotton; and

(3) an individual ginner's mark.

(b) The ginner's mark under Subsection (a) of this section shall be placed under the initials of the parties claiming ownership.

Acts 1981, 67th Leg., p. 1299, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 111.004. BALING. (a) Each bale of cotton ginned by a ginner shall be wrapped so that:

(1) the bale will be completely covered when compressed and the ends of the bale are closed and well sewn; and

(2) the markings on the bale will remain intact and visible under ordinary conditions.

(b) In compressing, recompressing, baling, or rebaling cotton, each person owning, operating, or working for a compress in this state shall, prior to delivery of a bale to a common carrier, bind and tie the bale so that the bale is free of:

(1) dangerously exposed ends of bands or buckles; or

(2) dangerously exposed or protruding parts of ties, bands, buckles, or splices.

Acts 1981, 67th Leg., p. 1299, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 111.005. LIABILITY FOR IMPROPER BALING. (a) A person who delivers to a common carrier a bale of cotton that is not tied or bound as required by Section 111.004(b) of this code shall forfeit to the state not less than $50 nor more than $250. A suit may be brought in the name of the state to recover that forfeiture.

(b) A person who receives for storage, loads for transportation, or transports in this state a bale that is not tied or bound as required by Section 111.004(b) of this code is liable for damages to any of the person's employees who is injured in the course of employment by a dangerously exposed end of band or buckle or dangerously exposed or protruding part of a tie, band, buckle, or splice. The employer and not the employee has the duty to inspect the bales of cotton.

Acts 1981, 67th Leg., p. 1299, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 111.007. PENALTIES. (a) A person commits an offense if the person operates a cotton gin for himself or herself or for commercial purposes without complying with this chapter.

(b) A person commits an offense if, as a ginner, the person:

(1) fails, neglects, or refuses to keep a record in accordance with Section 111.002 of this code; or

(2) fails, neglects, or refuses to mark a bale of cotton with the initials of each party who claims to own the cotton and with the ginner's mark in the manner required by Section 111.003 of this code.

(c) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1299, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 124, eff. Sept. 1, 1989.

SUBTITLE G. WORKPLACE CHEMICALS

CHAPTER 125. AGRICULTURAL HAZARD COMMUNICATION ACT

Sec. 125.001. DECLARATION OF PURPOSE. The legislature finds that the health and safety of persons living and working in agricultural areas in the state may be improved by providing access to information regarding certain hazardous chemicals to which they may be exposed either during their normal employment activities, during emergency situations, or as a result of proximity to the use of those chemicals. The legislature also finds that, because of the conditions of agricultural employment, there is a unique situation regarding certain agricultural laborers that makes it necessary to establish formal procedures to provide access to information regarding certain hazardous chemicals and to assure those laborers that there will be no retaliation by the employer for the exercise of rights under this chapter. This chapter is intended to assure that accessibility to information regarding chemicals covered by this chapter be provided to agricultural laborers who may be exposed to those chemicals in agricultural workplaces, to certain emergency service organizations responsible for dealing with chemical hazards during emergency situations when those chemicals are in close proximity to residential areas, and to the department to make the information available to the general public through specific procedures.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.002. DEFINITIONS. In this chapter:

(1) "Agricultural laborer" means a person who plants, cultivates, harvests, or handles an agricultural or horticultural commodity in its unmanufactured state as determined by rule of the department, and includes an agricultural laborer who handles a chemical covered by this chapter. Office workers, cooks, maintenance workers, security personnel, and nonresident management are not agricultural laborers, except for purposes of a gross annual payroll determination, unless their job performance routinely involves potential exposure to chemicals covered under this chapter. Farm and ranch laborers working solely with livestock and persons working solely in the retail sales component of a business are not agricultural laborers for purposes of this chapter.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation of identification such as code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.

(4) "Chemical manufacturer" means an employer in Standard Industrial Classification (SIC) Codes 20 through 39.

(5) "Designated representative" means the individual or organization to whom an agricultural laborer gives written authorization to exercise the laborer's rights under this chapter. A designated representative is not required to reveal the name of the agricultural laborer he represents if the department has reviewed the laborer's written authorization, certifies that the representative has that authorization, and determines that the agricultural laborer would be entitled to the information the designated representative is seeking to obtain. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written authorization from a laborer.

(6) "Distributor" means any business, other than a chemical manufacturer or importer, that supplies chemicals covered by this chapter to other distributors or to purchasers.

(7) "Expose" or "exposure" means that an agricultural laborer is subjected to a chemical covered by this chapter in the course of employment through any route of entry, including

inhalation, ingestion, skin contact, or absorption, and includes potential, possible, or accidental exposure.

(8) "Fire chief" means the elected or paid administrative head of a fire department as defined in Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).

(9) "Label" means any written, printed, or graphic material displayed on or affixed to containers of chemicals covered by this chapter.

(10) "Material safety data sheet" ("MSDS") means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) standard for that document or, in the case of a chemical labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) for which an MSDS is both unavailable and not required under the federal OSHA's hazard communication standard, a product label or other equivalent document with precautionary statements, such as hazards to humans and domestic animals, and environmental, physical, or chemical hazards, including warning statements.

(11) "Work area" means a room, defined space, or field where chemicals covered by this chapter are stored or used and where agricultural laborers may be present.

(12) "Workplace" means a geographical location containing one or more work areas.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.003. APPLICATION. (a) This chapter applies only to the following employers who annually use or store any one of the chemicals covered by this chapter in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:

(1) employers who themselves or through labor agents hire agricultural laborers to perform seasonal or migrant work and whose gross annual payroll for those laborers is $15,000 or more; and

(2) employers who themselves or through labor agents hire agricultural laborers for purposes other than seasonal or migrant work and whose gross annual payroll for those laborers is $50,000 or

more.

(b) This chapter applies only to the following chemicals:

(1) chemicals labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); and

(2) fertilizers with chemicals that are listed or defined as hazardous chemicals in 29 CFR Section 1910.1200(c) or 1910.1200(d)(3), including those listed or defined in subsequent comparable regulations.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.004. WORKPLACE CHEMICAL LIST. (a) An employer covered by this chapter shall compile and maintain a workplace chemical list on a form prescribed by the department that contains the following information by crop for each chemical covered by this chapter that is actually used or stored annually in the workplace in excess of 55 gallons or 500 pounds or an amount that the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter:

(1) the product name used on the MSDS and container label and the Environmental Protection Agency registration number, if applicable;

(2) the date and crop on which the chemical was applied or used; and

(3) the work area in which the chemical is actually stored or used.

(b) The employer shall update the workplace chemical list as necessary but not less frequently than annually.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area and must be readily available to agricultural laborers and their designated representatives. New or newly assigned agricultural laborers shall be made aware of the workplace chemical list before working with chemicals covered by this chapter or in a work area containing those chemicals.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.005. WORKPLACE CHEMICAL LIST FORM, MAINTENANCE, AND

ACCESS. (a) The department shall prescribe forms for workplace chemical lists required by this chapter with places to indicate the crop, the product name of the chemical that is applied to the crop or that is stored, and the location and date of its application, use, or storage, as appropriate.

(b) An employer covered by this chapter shall maintain one form for each crop, work area, or workplace as a whole, as appropriate, and shall add information to the form as different chemicals are applied, used, or stored.

(c) The employer shall attach relevant information to the form, including MSDSs.

(d) The employer shall keep the forms and attachments accessible and available for copying and shall store them in a location suitable to preserve their physical integrity.

(e) The employer shall keep the forms and attachments under this chapter for 30 years. However, the department shall provide by rule that an employer may file with the department annually the forms and attachments, including an estimate of the total amount of each chemical listed on the form that was used. The department shall categorize and cross-reference the data on the forms in a manner to preserve the data for future medical use. An employer who files the forms and attachments with the department under rules adopted under this section is not required to preserve the forms.

(f) If it is determined after a hearing conducted under Section 12.032 that an employer has repeatedly failed to maintain the forms and attachments as required, the department may require the employer to file the documents with the department. In addition, the person may be subject to any applicable penalties provided by this chapter.

(g) If agricultural activities for which forms and attachments are maintained cease at a workplace, the forms and attachments shall be filed with the department, and the department shall retain the information for 30 years. If an employer covered by this chapter is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as provided by Subsection (e) of this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of forms and attachments.

(h) Except as otherwise provided by this section, the employer shall show the forms and attachments, on request, to an employee,

designated representative, treating medical personnel, or a member of the community. The designated representative or treating medical personnel are not required to identify the employee represented or treated. If the employer has filed the forms and attachments with the department, the employer shall inform the requestor of that fact.

(i) If a designated representative or member of the community desires a copy of a form and attachments and the employer refuses to provide a copy, that person shall notify the department of the request and the employer's refusal. Within two working days, the department shall request that the employer provide the department with all pertinent copies. The employer shall provide copies of the form and attachments to the department within 24 hours after the department's request if a designated representative desires the copies, and within 14 days after the department's request if a member of the community desires the copies.

(j) The employer may not refuse to provide the forms and attachments to an employee or treating medical personnel.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 3.25, eff. Sept. 1, 1995.

Sec. 125.006. MATERIAL SAFETY DATA SHEETS. (a) Chemical manufacturers and distributors shall provide appropriate MSDSs to purchasers in this state of chemicals covered by this chapter.

(b) Employers covered by this chapter shall maintain the most current MSDS received from manufacturers or distributors for each purchased chemical covered by this chapter. If an MSDS has not been provided by the manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the employer shall request one in writing from the manufacturer or distributor in a timely manner. This chapter does not require an employer who is not a chemical manufacturer to create an MSDS.

(c) The department may require any person who has or obtains a registration for a pesticide under Sections 76.041-76.048 of this code to provide with the registration a copy of the most current and complete MSDS for that pesticide.

(d) The department by rule may require chemical manufacturers

to submit MSDSs for chemicals covered by this chapter, excluding chemicals covered by Subsection (c) of this section.

(e) All MSDSs in the files of the department are public records.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1.

Sec. 125.007. LABELS. (a) Existing labels on incoming containers of chemicals covered by this chapter may not be removed or defaced.

(b) Agricultural laborers may not be required to work with a chemical covered by this chapter from an unlabeled container except for a portable container intended for the immediate use of the laborer who performs the transfer.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.008. EMERGENCY INFORMATION. (a) Employers covered by this chapter and other entities who normally store products labeled under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) in an amount in excess of 55 gallons or 500 pounds or an amount the department determines by rule for certain highly toxic or dangerous chemicals covered by this chapter within one-quarter mile of a residential area composed of three or more private dwellings shall provide to the fire chief of the fire department having jurisdiction over the storage place, in writing, the names and telephone numbers of knowledgeable representatives of the employer or other entity storing the product who can be contacted for further information or contacted in case of an emergency.

(b) Each employer, on request, shall provide a copy of the workplace chemical list to the fire chief having jurisdiction over the storage place. The employer shall notify the fire chief of any significant changes that occur in the workplace chemical list.

(c) The fire chief having jurisdiction over the storage place or his representative, on request, shall be permitted to conduct on-site inspections of the chemicals on the workplace chemical list for the sole purpose of preparing fire department activities in case of an emergency.

(d) Employers shall provide to the fire chief having

jurisdiction over the storage place, on request, a copy of the MSDS for any chemical on the workplace chemical list.

(e) On request, the fire chief having jurisdiction over the storage place shall make the workplace chemical list and MSDSs available to members of the fire department having jurisdiction over the workplace and to other personnel outside the fire department who are responsible for preplanning emergency activities, but may not otherwise distribute the information without approval of the employer.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.009. TRAINING PROGRAM PROVIDED BY DEPARTMENT. (a) The department in conjunction with the Texas Agricultural Extension Service shall develop an on-going training program for agricultural laborers. The program must provide information the department considers appropriate, and must include:

(1) information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;

(2) information on the proper storage, acute and chronic effects, and safe handling of chemicals covered by this chapter;

(3) information on protective clothing and equipment and first aid treatment to be used with respect to the chemicals covered by this chapter; and

(4) general safety instructions on the handling, cleanup procedures, and disposal of chemicals covered by this chapter.

(b) The department shall provide the training program in counties with a hired farm labor work force of 2,000 or more, according to the most recent United States Census of Agriculture. The department by rule may determine to provide the training program in additional counties with a significant farm labor work force or based on other relevant factors. In all other counties, the county office of the Texas Agricultural Extension Service shall provide the training program.

(c) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall notify agricultural laborers on a regular basis of the training program by public service announcements given by the media and shall contact in writing charitable, public, religious, and health care provider

organizations to announce the training program to agricultural laborers in the county served by the organization.

(d) In addition to the Texas Agricultural Extension Service, the department may develop the training program in conjunction with the Texas Department of Health, other appropriate state agencies, clinics, hospitals, and other health care providers in counties in which the training program will be conducted, and organizations representing employers, organizations representing employees, and organizations representing manufacturers of chemicals covered by this chapter.

(e) The department shall prepare and make available to employers appropriate training materials for employers covered by this chapter and their managers and labor contractors.

(f) To help cover production costs, the department may charge not more than $10 plus the cost of a blank videotape from a person desiring to purchase the videotaped training program.

(g) The department or the county office of the Texas Agricultural Extension Service, as appropriate, shall provide to each agricultural laborer who completes the training program a card evidencing participation in the program. An employer may not refuse to hire an agricultural laborer solely because the laborer does not have a card issued under this subsection. An employer who refuses to hire an agricultural laborer for that reason is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.010. CROP SHEET DEVELOPED BY DEPARTMENT. (a) The department shall develop crop sheets that contain the following information:

(1) the kinds of chemicals typically used on a particular crop;

(2) the typical time a chemical is applied to a particular crop;

(3) general safety information, including information on general hygiene, clothing, contact with chemicals, medical symptoms, pregnancy, and other relevant safety data;

(4) a notice of the training programs and the counties in which the programs will be conducted;

(5) the availability of MSDSs for chemicals used on a particular crop;

(6) the means of locating emergency medical information;

(7) agricultural laborers' rights under this chapter;

(8) the name and telephone number of the person to contact for information under this chapter;

(9) the appropriate telephone number for emergency information; and

(10) any other safety or health-related information the department considers relevant.

(b) The information on the crop sheet must be printed in English and Spanish, except that the information required by Subsections (a)(1) and (a)(2) of this section is required to be printed only in English. The department may provide crop sheets printed in other languages commonly used by agricultural laborers who work with a particular crop.

(c) The department shall develop the crop sheets in conjunction with the Texas Department of Health, the Texas Agricultural Extension Service, other appropriate state agencies, and clinics, hospitals, and other health care providers in counties in which training programs are provided by the department under Section 125.009 of this code.

(d) Annually, the department shall:

(1) provide appropriate crop sheets to clinics, hospitals, and other health care providers that serve agricultural laborers and that are located in counties in which the training program is provided; and

(2) provide to an employer covered by this chapter one crop sheet for each crop grown by that employer.

(e) The director of the Texas Feed and Fertilizer Control Service under Section 63.003 of this code shall provide to the department the information that is needed by the department under Subsection (a) of this section for the fertilizers that are covered by this chapter.

(f) For purposes of developing crop sheets under this chapter and complying with other provisions of this chapter, nursery stock, stored grain, and other logical groupings may be considered a single crop as determined by rules adopted by the department.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.011. CROP SHEET PROVIDED BY EMPLOYER. (a) An employer covered by this chapter shall provide crop sheets to each agricultural laborer pertaining to the crops that laborer will be working with if:

(1) the laborer does not have a card issued under Section 125.009(g) of this code; or

(2) the laborer requests the crop sheets.

(b) An employer who is required under Subsection (a) of this section to provide crop sheets to an agricultural laborer shall ensure that the information on a crop sheet required by Sections 125.010(a)(3), (a)(4), and (a)(10) of this code that pertains to the crops with which the laborer will be working is read to the laborer at least once each work season. When the crop sheet is read, the employer or the employer's agent shall inform the laborer of the date on which chemicals covered by this chapter were last applied or are scheduled to be applied to the field or to other areas in which the laborer will be working and shall inform the laborer of the time on which the reentry period, if any, expired for chemicals covered by this chapter that have been applied.

(c) If an employer is required under Subsection (b) of this section to read a crop sheet to an agricultural laborer, the employer or a person designated by the employer shall read the appropriate crop sheets on the first day of each work season or on the day the laborer begins employment with that employer, whichever is later.

(d) In addition to the crop sheet, the department shall require an employer to offer to the agricultural laborer, on the day on which the laborer is given his first pay for that work season, basic safety and health-related information approved by the department. That information shall be available to the employers free of charge.

(e) An employer who does not provide or read the crop sheets as required by this section is not entitled to the 14 days' written notice provided by Section 125.016(d) of this code.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.012. PROTECTIVE CLOTHING. An employer covered by this chapter shall provide any protective clothing or device that is

recommended by the MSDS, crop sheet, or department rule and that is in addition to the standard long-sleeved shirt, long pants, boots or shoes, and socks normally provided by the agricultural laborer.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.013. RIGHTS OF AGRICULTURAL LABORERS. (a) Agricultural laborers employed by employers covered by this chapter who may be exposed to chemicals covered by this chapter shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for those chemicals. Laborers, on request, shall be provided a copy of a specific MSDS. In addition, laborers shall receive training on the hazards of the chemicals and on measures they can take to protect themselves from those hazards and shall be provided with appropriate personal protective equipment as required by this chapter. These rights are guaranteed on January 1, 1988.

(b) An employer covered by this chapter may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an agricultural laborer because the laborer has made an inquiry, filed a complaint, assisted an inspector of the department who may make or is making an inspection under Section 125.016 of this code, instituted or caused to be instituted any proceeding under or related to this chapter, testified or is about to testify in such a proceeding, or exercised any rights afforded under this chapter on behalf of the laborer or on behalf of others. Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(c) Any waiver by an agricultural laborer of the benefits or requirements of this chapter is against public policy and is void. Any employer's request or requirement that a laborer waive any rights under this chapter as a condition of employment is a violation of this chapter.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.014. DEPARTMENT RULES; OUTREACH PROGRAM. (a) The department may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The department shall develop and provide to each employer covered by this chapter a suitable form of notice providing agricultural laborers with information regarding their rights under this chapter.

(c) As part of an outreach program, the department shall develop and distribute a supply of informational leaflets on employers' duties, agricultural laborers' rights, the public's ability to obtain information under this chapter, the outreach program, and the effects of chemicals covered by this chapter.

(d) The department may contract with a public institution of higher education or other public or private organizations to develop and implement the outreach program.

(e) The department shall publicize the availability of information to answer inquiries from agricultural laborers, employers, or the public in this state concerning the effects of chemicals covered by this chapter.

(f) In cooperation with the department, an employer covered by this chapter may provide an outreach program in the community.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.015. LIABILITY UNDER OTHER LAWS. (a) The provision of information to an agricultural laborer does not in any way affect the liability of an employer with regard to the health and safety of a laborer or other person exposed to chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law.

(b) The provision of information to an agricultural laborer does not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a chemical under any other provision of law.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988.

Sec. 125.016. COMPLAINTS, INVESTIGATIONS, AND PENALTIES. (a) Complaints received in writing from agricultural laborers or their designated representatives relating to alleged violations of this chapter by employers covered by this chapter shall be investigated in

a timely manner by the department as provided by this section.

(b) Officers or representatives of the department, on presentation of appropriate credentials, have the right of entry into any workplace at reasonable times to inspect and investigate complaints for purposes of determining compliance with this chapter.

(c) The department shall complete an investigation of a complaint not later than 90 days after the date on which the complaint is filed. A hearing shall be conducted under Section 12.032 and an enforcement order issued, if appropriate, not later than 90 days after the date on which the investigation is completed. If it is necessary to commence an action relating to an alleged violation, the action must be commenced not later than 60 days after the date on which the investigation is completed.

(d) After providing at least 14 days' written notice and an opportunity for a public hearing, the department may issue an enforcement order requiring any employer or chemical manufacturer covered by this chapter to comply with this chapter or rules adopted under this chapter. A public hearing held under this subsection is a contested case under Chapter 2001, Government Code, and may be appealed under that chapter. In the case of a medical emergency, the department may issue an enforcement order immediately and shall provide the opportunity for a hearing on the order within 10 days after the date on which the order is issued.

(e) In the case of a medical emergency, the department may sue in the name of the State of Texas to enjoin any violation of this chapter or a rule adopted or enforcement order issued by the department under this chapter.

(f) If required under this chapter, employers who knowingly disclose false information or negligently fail to disclose a hazard are subject to a civil penalty of not more than $5,000 per violation. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.

(g) If required under this chapter, employers who proximately cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than $25,000. This section does not affect any other right of an agricultural laborer or any other person to receive compensation for damages under other law.

(h) The department may request the attorney general to

represent the department in any legal proceeding authorized under this chapter. An action for civil or criminal penalties or injunctive relief shall be brought in the county in which the alleged violation occurred or is occurring.

(i) Each violation of this chapter or a rule adopted under this chapter constitutes a separate offense.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.26, eff. Sept. 1, 1995.

Sec. 125.017. COMPLIANCE WITH HAZARD COMMUNICATION ACT. (a) If an employer is required to comply with Chapter 502, Health and Safety Code and with this chapter, the employer is required to comply with only the Hazard Communication Act. However, if an agricultural laborer is not covered under the Hazard Communication Act, the employer shall comply with this chapter for those laborers not covered by the Hazard Communication Act.

(b) If an employer is covered by both the Hazard Communication Act and this chapter, the employer is required to furnish a workplace chemical list under only one of those laws.

Added by Acts 1987, 70th Leg., ch. 903, Sec. 1, eff. Jan. 1, 1988. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(92), eff. Sept. 1, 1991.

SUBTITLE H. HORTICULTURAL LIENS

CHAPTER 128. AGRICULTURAL CHEMICAL AND SEED LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 128.001. DEFINITIONS. In this chapter:

(1) "Agricultural chemical" includes fertilizer material as defined under Section 63.001, pesticides as defined under Section 76.001, plant regulators as defined under Section 76.001, lime, plant and soil amendments, plant food, herbicides, and chemical compounds that are applied to crops or to land used for growing crops.

(2) "Agricultural seed" has the meaning assigned under Section 61.001.

(3) "Labor" means labor or services performed in the application, delivery, or preparation of an agricultural chemical or

agricultural seed.

(4) "Reasonable or agreed charges" means:

(A) any agreed price for agricultural chemicals, agricultural seeds, or labor sold or provided to a lien debtor at the lien debtor's request; or

(B) the reasonable value of agricultural chemicals, agricultural seeds, or labor, as of the date of application, delivery, or preparation, if there is not an agreed price or an agreed method for determining price.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.002. PROCEEDS. (a) For the purposes of this chapter, proceeds are the amounts received by a lien debtor, before a deduction for taxes, fees, or assessments or a deduction made under a court order, from the sale of:

(1) the crop that existed at the time of application on the land of the agricultural chemical sold by the lien claimant or applied, delivered, or prepared by the lien claimant;

(2) the first crop produced on the land after the agricultural chemical sold by the lien claimant or applied, delivered, or prepared by the lien claimant was applied, if crops did not exist on the land at the time the agricultural chemical was applied; or

(3) the crop produced from the agricultural seed supplied by the lien claimant or applied, delivered, or prepared by the lien claimant.

(b) For the purposes of this chapter, the following are not included as proceeds:

(1) amounts due or owing to a cooperative association under Chapter 51 or 52; or

(2) amounts retained by a cooperative association under Chapter 51 or 52.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. AGRICULTURAL CHEMICAL AND SEED LIEN

Sec. 128.006. NOTICE BEFORE PURCHASE; REQUIRED NOTICE BEFORE CLAIMING LIEN. (a) A person claiming a lien under this chapter must

have provided notice of the provisions of this chapter, before purchase, either generally to purchasers of agricultural chemicals, agricultural seeds, or labor as part of the lien claimant's normal business practices or specifically to the lien debtor. Notice provided under this subsection must read, to the extent applicable, substantially as follows: "The sale of agricultural chemicals or agricultural seed on credit and the provision of labor related to agricultural chemicals or agricultural seed is subject to Chapter 128, Agriculture Code. Failure to pay the agreed or reasonable charges for the chemicals, seed, or labor may result in the attachment of a lien to the proceeds of the agricultural products produced with the aid of the chemicals, seed, or labor." A potential lien claimant may satisfy the requirements of this subsection:

(1) by printing or stamping the notice on credit applications filled out by purchasers; and

(2) for future purchases by purchasers who are not notified on the credit application, by printing or stamping the notice on an invoice or on a statement sent by separate cover.

(b) Before a person may claim a lien under this chapter, the person must send to the debtor by certified mail written notice that states:

(1) that the payment of the reasonable or agreed charges is more than 30 days overdue;

(2) the amount that is overdue;

(3) that the debtor has the following three alternatives:

(A) to allow the lien to be filed;

(B) to enter into an agreement granting a security interest in the proceeds described by Section 128.002 under the Business & Commerce Code; or

(C) to pay the reasonable or agreed charges; and

(4) in at least 10-point type, that:

(A) the debtor has until the 10th day after the date on which the notice is received to select an alternative under Subdivision (3), notify the claimant of the alternative selected, and satisfy all the requirements of the selected alternative; and

(B) the claimant may file the notice of claim of lien at any time after the 10th day after the date on which the debtor receives the notice if the debtor does not comply with the requirements of Paragraph (A).

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.007. ATTACHMENT OF LIEN. (a) A lien established under this chapter attaches to the proceeds described by Section 128.002.

(b) A lien established under this chapter attaches on the first day agricultural chemicals, labor, or both are furnished to the lien debtor. A lien that has attached under this section is removed if the lien claimant does not satisfy the notice and filing requirements of this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 1, eff. Sept. 1, 1997.

Sec. 128.008. AMOUNT OF LIEN. The amount of a lien under this chapter is equal to the sum of:

(1) the amount of the unpaid reasonable or agreed charges for:

(A) agricultural chemicals, labor, or both, as appropriate, furnished within the 180-day period immediately preceding the day the notice of claim of lien is filed with the secretary of state as provided by this chapter; and

(B) agricultural seeds, labor, or both, as appropriate, furnished within the 180-day period immediately preceding the day the notice of claim of lien is filed with the secretary of state as provided by this chapter; and

(2) the filing fees for the lien as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 2, eff. Sept. 1, 1997.

Sec. 128.009. PERSON ENTITLED TO FILE; EXCEPTION. (a) Except as provided by Subsection (b) or by Section 128.047, a person who provides an agricultural chemical, agricultural seed, or labor may file a notice of claim of lien as provided by this chapter.

(b) A claimant may not file a notice of claim of lien if the settlement of a dispute between the claimant and the debtor has been

submitted to the department and is pending.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 3, eff. Sept. 1, 1997.

Sec. 128.010. PERFECTION OF LIEN. A lien created under this chapter is perfected on the filing of a notice of claim of lien with the secretary of state as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.011. DURATION OF NOTICE OF CLAIM OF LIEN. (a) Except as otherwise provided by this chapter, the notice of claim of lien is effective, and a new notice of claim of lien is not required to maintain the lien, as long as the person who provides the agricultural chemical, agricultural seed, or labor either:

(1) remains unpaid for the amount secured by the lien; or

(2) continues to provide an agricultural chemical, agricultural seed, or labor on a regular basis to the lien debtor.

(b) For purposes of this section, providing an agricultural chemical, agricultural seed, or labor is not considered to be made on a regular basis if a period of more than 45 days elapses between applications, deliveries, or preparations.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.012. PROCEDURES FOR SETTLEMENT OF DISPUTES. (a) The commissioner of agriculture by rule shall establish a procedure to settle a dispute between a claimant supplying agricultural chemicals or labor in the application, delivery, or preparation of agricultural chemicals and a debtor. The procedures must provide:

(1) a time requirement for submitting the dispute to the department;

(2) a time requirement within which a notice of the dispute must be submitted to each party; and

(3) a process for evaluating the dispute.

(b) Each party to the dispute is equally liable for the reasonable costs incurred by the department in carrying out this

section.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.013. CONTENTS OF NOTICE OF CLAIM OF LIEN. The notice of claim of lien must include:

(1) the name and address of the lien claimant;

(2) the name and address of the lien debtor;

(3) the location of the property to which the agricultural chemical, agricultural seed, or labor was provided;

(4) a statement that the payment of the reasonable or agreed charges is more than 30 days overdue;

(5) the amount that is overdue;

(6) a statement, signed under penalty of perjury, that:

(A) the lien claimant provided notice of the provisions of this chapter, before purchase, either generally to purchasers of agricultural chemicals, agricultural seeds, or labor as part of the lien claimant's normal business practices or specifically to the lien debtor, in the manner required by Section 128.006(a);

(B) the lien claimant sent to the lien debtor the notice required by Section 128.006(b);

(C) more than 10 days have elapsed since the date on which the notice was received by the lien debtor; and

(D) the lien debtor has not complied with the requirements of an alternative set out by Section 128.006(b); and

(7) a statement that the lien claimant has an agricultural chemical or agricultural seed lien under this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.014. SIGNATURE. The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.015. FORM. (a) The notice of claim of lien must be filed on a form that satisfies the requirements of a financing

statement under Sections 9.502-9.504, Business & Commerce Code, except that:

(1) the lien claimant may be identified either as a lien claimant or as a secured party;

(2) the form must be signed by the lien claimant and is not required to be signed by the lien debtor; and

(3) in the space for the description of the collateral, the information specified in Sections 128.013(3), (4), (5), and (7) must be entered.

(b) A separately signed statement containing the information specified in Section 128.013(6) shall be attached to the form required under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.01, eff. July 1, 2001.

Sec. 128.016. FILING AND MARKING IN OFFICE OF SECRETARY OF STATE; FEE. (a) The notice of claim of lien shall be filed and marked in the office of the secretary of state in the same manner as a financing statement is filed and marked under Section 9.519, Business & Commerce Code.

(b) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party is the same as the fee assessed under Section 9.525, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.02, eff. July 1, 2001.

Sec. 128.017. TIME OF WRITTEN NOTICE. The lien claimant shall provide written notice of the claim of lien to the lien debtor not later than the 10th day after the date the notice of claim of lien is filed with the office of the secretary of state.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.018. RECOGNITION OF NOTICE AS FINANCING STATEMENT.

The secretary of state shall recognize a notice of claim of lien under this subchapter as a financing statement under Subchapter E, Chapter 9, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.03, eff. July 1, 2001.

SUBCHAPTER C. PRIORITY OF LIEN

Sec. 128.026. TIME OF FILING. (a) A lien created under this chapter has the same priority as a security interest perfected by the filing of a financing statement on the date the notice of claim of lien was filed.

(b) A lien created under this chapter does not have priority over labor claims for wages and salaries for personal services that are provided by an employee to a lien debtor in connection with the production of agricultural products, the proceeds of which are subject to the lien.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. INFORMATION CONCERNING LIEN

Sec. 128.031. ISSUANCE OF CERTIFICATE TO MEMBER OF PUBLIC; FEE. (a) A person may obtain a certificate identifying any lien on file and any notice of claim of lien naming a particular debtor and stating the date and time of filing of each notice and the names and addresses of each lienholder in the certificate.

(b) The amount of the fee for a certificate under Subsection (a) is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 6, eff. September 1, 2009.

Sec. 128.032. COPIES OF NOTICES OF CLAIM OF LIEN AND OTHER NOTICES; FEE. (a) A person may obtain a copy of any notice of

claim of an agricultural chemical or seed lien filed.

(b) The fee for a copy of a notice of claim of lien obtained under Subsection (a) is in the amount provided by Section 405.031, Government Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 7, eff. September 1, 2009.

SUBCHAPTER E. ENFORCEMENT OF LIEN

Sec. 128.036. WRITTEN NOTICE TO SECURED CREDITORS BY LIEN CLAIMANT. (a) A lien claimant shall provide written notice to any secured creditor at least 30 days before the date the lien claimant enforces a claim of lien.

(b) For purposes of this section, "secured creditor" means any entity named as a secured party in a financing statement that is filed regarding the debtor and that covers:

(1) a farm product, an account, or a crop subject to the lien;

(2) a crop growing or grown on the land on which the agricultural chemical was applied or for which the agricultural seed was supplied; or

(3) the next crop to be grown on that land, if a crop is not planted.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.037. FORECLOSURE IN ACTION TO RECOVER REASONABLE OR AGREED CHARGES. The lien claimant may foreclose on a lien under this chapter only in an action to recover the reasonable or agreed charges.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.038. TERMINATION STATEMENT. (a) If a lien claimant receives payment for the total amount secured by a lien under this chapter and the lien claimant has not furnished an agricultural

chemical, agricultural seed, or labor during the 45-day period before the date on which payment is received, the lien claimant shall file a termination statement with the secretary of state and shall send the lien debtor a copy of the statement as provided by this section. The statement shall state that the lien claimant no longer claims a security interest under the notice of claim of lien.

(b) The notice of claim of lien must be identified in the statement under Subsection (a) by the date, names of parties to the agreement, and file number of the original lien.

(c) If the lien claimant does not send the termination statement required by this section before the 11th day after the date on which the lien claimant received payment, the lien claimant is liable to the lien debtor for actual damages suffered by the lien debtor as a result of the failure. If the lien claimant acts in bad faith in failing to send the statement, the lien claimant is liable for an additional penalty of $100.

(d) The filing officer in the secretary of state's office shall mark each termination statement with the date and time of filing and shall index the statement under the name of the lien debtor and under the file number of the original lien. If the filing officer has a microfilm or other photographic record of the lien and related filings, the filing officer may destroy the filed notice of claim of lien at any time after receiving the termination statement. If the filing officer does not have a photographic record, the filing officer may destroy the filed notice of claim of lien at any time after the first anniversary of the date on which the filing officer received the termination statement.

(e) The uniform filing fee for filing and indexing the termination statement is the same as the fee assessed under Section 9.525, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.04, eff. July 1, 2001.

Sec. 128.039. RIGHT OF ASSIGNMENT OR TRANSFER; FILING OF STATEMENT. (a) A lien created under this chapter may be assigned by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment with

the secretary of state as provided by Section 9.514, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.05, eff. July 1, 2001.

SUBCHAPTER F. MISCELLANEOUS

Sec. 128.046. RULES. The secretary of state may adopt rules necessary to carry out the secretary's duties under this chapter, including prescribing necessary forms.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.047. MAXIMUM NUMBER OF LIENS. Not more than four liens may be enforced under this chapter against the same proceeds of a lien debtor even if the liens are filed by different lien claimants.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.048. APPLICABILITY OF OTHER LAW. Chapter 9, Business & Commerce Code, applies to a lien created under this chapter to the extent Chapter 9 is consistent with this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

TITLE 6. PRODUCTION, PROCESSING, AND SALE OF ANIMAL PRODUCTS

SUBTITLE A. BEES AND NONLIVESTOCK ANIMAL INDUSTRY

CHAPTER 131. BEES AND HONEY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 131.001. DEFINITIONS. In this chapter:

(1) "Abandoned apiary, equipment, or bees" means an apiary, equipment, or a colony of bees that is not regularly maintained or attended in accordance with this chapter or rules or quarantines adopted under this chapter.

(2) "Apiary" means a place where six or more colonies of

bees or nuclei of bees are kept.

(3) "Beekeeper" means a person who owns, leases, or manages one or more colonies of bees for pollination or the production of honey, beeswax, or other by-products, either for personal or commercial use.

(4) "Bee" means any stage of the common honeybee, Apis mellifera species.

(5) "Colony" means the hive and its equipment and appurtenances including bees, comb, honey, pollen, and brood.

(6) "Director" means the director of the Texas Agricultural Experiment Station.

(7) "Disease" means American foulbrood, European foulbrood, any other contagious or infectious disease of honeybees, or parasites or pests that affect bees or brood.

(8) "Equipment" means hives, supers, frames, veils, gloves, tools, machines, or other devices for the handling and manipulation of bees, honey, pollen, wax, or hives, including, storage or transporting containers for pollen, honey, or wax, or other apiary supplies used in the operation of an apiary or honey house.

(9) "Inspector" means the chief apiary inspector.

(10) "Label" as a noun, means written or printed material accompanying a product and furnishing identification or a description. The term includes material attached to a product or its immediate container and material inserted in an immediate container or other packaging of a product.

(11) "Label" as a verb, means to attach or insert a label.

(12) "Nucleus" means a small mass of bees and combs of brood used in forming a new colony.

(13) "Pollen" means dust-like grains formed in the anthers of flowering plants in which the male elements or sperm are produced.

(14) "Pure honey" means the nectar of plants that has been transformed by, and is the natural product of, bees and that is in the comb or has been taken from the comb and is packaged in a liquid, crystallized, or granular form.

(15) "Queen apiary" means an apiary in which queen bees are reared or kept for sale, barter, or exchange.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

Sec. 131.002. CHIEF APIARY INSPECTOR. (a) The director shall appoint a person qualified by scientific training or personal experience as chief apiary inspector to make inspections and administer this chapter under the direction and control of the director.

(b) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(4), eff. Nov. 12, 1991.

(c) The state entomologist shall make an annual report to the director giving a detailed account of inspection activities, receipt and use of funds, and compliance actions brought under this chapter.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 479, Sec. 186, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(4), eff. Nov. 12, 1991.

Sec. 131.003. CONFLICTS OF INTEREST. (a) A person may not serve as chief apiary inspector or be an assistant of the inspector if the person is an officer, employee, or paid consultant of a trade association in the beekeeping industry.

(b) A person may not serve as chief apiary inspector or be an assistant of the inspector of the grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act, if the person cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in the beekeeping industry.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

Sec. 131.004. ASSISTANTS. (a) The chief apiary inspector may employ assistants and inspectors as necessary, subject to the approval of the director and governing board of the experiment station.

(b) The inspector shall provide to his assistants as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The inspector shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for the

inspector's assistants must be based on the system established under this subsection.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

Sec. 131.005. ANNUAL REPORTS. (a) The chief apiary inspector shall make an annual report to the director giving a detailed account of inspection activities, receipt and use of funds, and compliance actions brought under this chapter.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(4), eff. June 17, 2011.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(4), eff. June 17, 2011.

Sec. 131.006. AUDIT. The financial transactions of the chief apiary inspector are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1989, 71st Leg., ch. 584, Sec. 68, eff. Sept. 1989.

Sec. 131.007. PUBLISHING INFORMATION. (a) The chief apiary inspector shall publish information on methods and directions for treating, eradicating, or suppressing infectious diseases of honeybees, the rules adopted for those purposes, and other information that the inspector considers of value or necessity to the beekeeping interests of this state.

(b) The inspector shall prepare information of public interest describing the functions of the agency and describing the procedure by which complaints are filed with and resolved by the inspector. The inspector shall make the information available to the general public and appropriate state agencies.

(c) The inspector shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the inspector's office for

the purpose of directing complaints to the inspector. The inspector may provide for the notification by including the information:

(1) on each registration or application form submitted by a person regulated under this chapter;

(2) on a sign which is prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for services or goods provided by a person regulated under this chapter.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

Sec. 131.008. COMPLAINTS. (a) The chief apiary inspector shall keep an information file about each complaint filed with the inspector relating to a beekeeper regulated under this chapter.

(b) If a written complaint is filed with the inspector relating to a beekeeper regulated under this chapter, the inspector shall notify the parties to the complaint, at least quarterly and until final disposition of the complaint, of the status of the complaint, unless notice would jeopardize an undercover investigation.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

Sec. 131.009. PUBLIC TESTIMONY. The chief apiary inspector shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the inspector and to speak on any issue under the jurisdiction of the inspector.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

Sec. 131.010. FEES. The chief apiary inspector shall make a reasonable effort to set the fees charged under this chapter at amounts that will produce enough revenue to approximate 50 percent of the inspector's total budget. In achieving this goal, the inspector shall balance the revenue needs against the effect of the fees on the industry.

Added by Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER B. DISEASE CONTROL

Sec. 131.021. POWERS AND DUTIES OF CHIEF APIARY INSPECTOR. (a) For the purpose of enforcing this chapter, the chief apiary inspector may:

(1) adopt rules and act as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of contagious or infectious diseases of bees;

(2) prohibit the shipment or entry into this state of bees, honey, combs, pollen, or other items capable of transmitting diseases of bees from another state, territory, or foreign country except in accordance with rules adopted by the inspector; and

(3) seize and order the destruction, treatment, or sale of a colony of bees, equipment, pollen, or honey that is determined to be diseased, infectious, abandoned, or in violation of this chapter or a rule or quarantine adopted under this chapter.

(b) For purposes of this section, apiaries, equipment, or bees are considered infectious if:

(1) the bees are not hived with movable frames or stored so as to prevent the possible spread of disease; or

(2) the bees, equipment, or apiary generally comprise a hazard or threat to disease control in the beekeeping industry.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 2, eff. Sept. 1, 1985.

Sec. 131.022. QUARANTINES. (a) If the chief apiary inspector determines that the public welfare requires the establishment of a quarantine, the inspector may:

(1) declare a protective quarantine of a district, county, precinct, or other defined area in which a disease of bees or a deleterious exotic species of bees is not known to exist or in which the disease or exotic species is being eradicated in accordance with this subchapter; or

(2) declare a restrictive quarantine of a district, county, precinct, or other defined area in which a disease of bees or a deleterious exotic species of bees is located.

(b) A person may not move or ship bees, equipment, pollen, or honey into or out of an area quarantined under this section, except in accordance with rules adopted by the inspector.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 2, eff. Sept. 1, 1985.

Sec. 131.023. SALE OF QUEEN BEE AND ATTENDANTS, PACKAGE BEES, AND NUCLEI. A person may not sell or offer for sale a queen bee and attendant bees, package bees, nuclei, or queen cells in this state unless the bees are accompanied by:

(1) a copy of a certificate from the chief apiary inspector certifying that the apiary from which the queen bee was shipped has been inspected not more than 12 months before the date of shipment and found apparently free from disease; or

(2) a copy of an affidavit made by the beekeeper stating that:

(A) to his knowledge, the bees are not diseased; and

(B) the honey used in making the candy contained in the queen cage has been diluted and boiled for at least 30 minutes in a closed vessel.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 2, eff. Sept. 1, 1985.

Sec. 131.024. SEIZURE OF BEES, EQUIPMENT, POLLEN, OR HONEY. (a) Bees, equipment, pollen, or honey seized by the chief apiary inspector under Section 131.021 of this code shall be treated, destroyed, or sold at public auction.

(b) At least five days before an item seized under Section 131.021 of this code may be treated, destroyed, or sold, the inspector shall send by certified mail, return receipt requested, written notice of the proposed disposition of the item to the last known address of the beekeeper or the owner of the item. The notice must describe the item, the proposed disposition of the item, and the reason for the disposition. If the name or address of the beekeeper or owner of the item is unknown, the inspector shall:

(1) publish notice of the proposed disposition for at least five consecutive days in a newspaper of general circulation in the county where the property was seized; or

(2) post notice of the proposed disposition for at least five consecutive days in three public places, including the door of

the county courthouse, in the county where the property was seized.

(c) If the inspector sells bees, equipment, pollen, or honey at a public auction under this section, the inspector shall return the proceeds of the sale to the former owner after deducting the costs of the sale.

(d) The owner of bees, equipment, pollen, or honey treated or destroyed under this section is liable for the costs of treatment or destruction, and the inspector may sue to collect those costs. The inspector shall remit money collected under this subsection to the comptroller for deposit to the credit of the general revenue fund.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 2, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 2.12, eff. Sept. 1, 1997.

Sec. 131.025. DUTY TO REPORT DISEASED BEES. If a beekeeper knows that a colony of bees is diseased, the beekeeper shall immediately report to the chief apiary inspector all facts known about the diseased bees.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER C. PERMITS AND REGISTRATION

Sec. 131.041. PERMIT FOR IMPORTATION. (a) A person may not ship or cause to be shipped bees or equipment into this state unless the person has a permit issued by the chief apiary inspector authorizing the shipment.

(b) A person may apply for a permit under this section by filing an application with the inspector before the 10th day preceding the date of the shipment. An application for a permit must include:

(1) a complete description of the shipment;

(2) the destination of the shipment;

(3) the approximate date of the shipment;

(4) the names and addresses of the consignor and consignee; and

(5) a certificate of inspection signed by the official apiary inspector or entomologist of the state, territory, or country

from which the bees are to be shipped.

(c) A certificate of inspection for a permit required by Subsection (b)(5) of this section must certify that the bees or equipment are apparently free from disease based on an actual inspection conducted not more than 12 months before the date of the shipment. If the bees or equipment are to be shipped into this state from a state, territory, or country that does not have an official apiary inspector or entomologist, the person shipping the bees or equipment may provide other suitable evidence that the bees and equipment are free from disease.

(d) If a person files an application in accordance with Subsection (b) of this section and the inspector is satisfied that the shipment does not pose a threat to disease control in the beekeeping industry, the inspector shall issue a permit authorizing the shipment.

(e) This section does not apply to a shipment of live bees in wire cages without combs or honey.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 3, eff. Sept. 1, 1985.

Sec. 131.042. PERMIT FOR EXPORTATION. (a) A person who ships bees or equipment from this state to another state, territory, or country may apply to the chief apiary inspector for a permit authorizing the shipment. The application must include:

(1) a complete description of the shipment;

(2) the destination of the shipment;

(3) the approximate date of the shipment;

(4) the names and addresses of the consignor and consignee; and

(5) evidence that the shipment is apparently free from a disease of bees.

(b) The inspector shall accept as evidence that a shipment is apparently free from disease either:

(1) a certificate of inspection issued under Section 131.044 of this code; or

(2) an affidavit by the beekeeper or owner of the bees or equipment stating that to his knowledge, the bees or equipment are free from disease.

(c) If a person files an application in accordance with Subsection (a) of this section, and the inspector is satisfied that the shipment does not pose a threat to disease control in the beekeeping industry, the inspector shall issue a permit for the shipment.

(d) The inspector shall charge a fee for each permit issued under this section. The inspector shall set the fee at an amount that is reasonable in relation to the costs of administering this section, but at not less than $50. Additional copies of each permit issued under this section shall be available from the inspector for a reasonable fee set by the inspector at not less than $10.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 3, eff. Sept. 1, 1985.

Sec. 131.043. PERMITS FOR INTRASTATE SHIPMENT. (a) A person may not ship or cause to be shipped bees or equipment between counties in this state unless the person has a permit issued by the chief apiary inspector authorizing the shipment.

(b) A person may apply for a permit under this section by filing an application for a permit with the inspector before the 10th day preceding the date of shipment. An application for a permit must include:

(1) the name, address, and telephone number of the beekeeper;

(2) a complete description of the bees or equipment to be moved;

(3) the number of intercounty movements anticipated;

(4) the destination of each shipment; and

(5) the approximate date or dates of movement.

(c) If a person files an application in accordance with Subsection (b) of this section and the inspector is satisfied that the shipment does not pose a threat to disease control in the beekeeping industry, the inspector shall issue a permit authorizing the shipment.

(d) The inspector shall charge a fee for each permit issued under this section. The inspector shall set the fee at an amount that is reasonable in relation to the costs of administering this section, but at not less than $25.

(e) An individual who owns not more than 12 colonies of bees is exempt from the permit fee charged under Subsection (d) of this section.

(f) A permit issued under this section entitles the permittee to move the bees or equipment between the designated counties during the state fiscal year in which the permit was issued.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 3, eff. Sept. 1, 1985.

Sec. 131.044. CERTIFICATE OF INSPECTION. (a) A person who wants a certificate of inspection for bees, equipment, pollen, or honey must file a written request for the inspection with the chief apiary inspector.

(b) On receipt of a request, the inspector shall authorize the inspection of the bees, equipment, pollen, or honey for the presence of disease.

(c) If a disease is not found in the bees, equipment, pollen, or honey, the inspector shall certify in writing that the bees, equipment, pollen, or honey is apparently free from disease.

(d) The inspector shall charge fees for inspections requested under this section. The inspector shall set the fees in amounts that are reasonable in relation to the costs of administering this section, but at not less than the following amounts:

(1) for each inspection of an apiary or group of apiaries, except a queen apiary, located within an area of 100 square miles $ 50

(2) for an inspection of a queen apiary or group of queen apiaries located within an area of 100 square miles $200

(3) for each additional inspection of a queen apiary or group of queen apiaries located within an area of 100 square miles $ 50.

(e) The beekeeper of diseased bees or equipment shall pay an additional fee, in a reasonable amount set by the inspector at not less that $25, for each subsequent inspection that the inspector determines is necessary to contain, treat, or eradicate the disease.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 3, eff. Sept. 1, 1985.

Sec. 131.045. APIARY REGISTRATION. (a) The chief apiary inspector may provide for the periodic registration of all apiaries in this state.

(b) A registration must include:

(1) the beekeeper's name, address, and telephone number;

(2) the county or counties in which the apiary will be located; and

(3) the approximate dates that the apiary will be located in each county.

(c) The inspector may require a beekeeper to submit with the registration information a map showing the exact location of each of the beekeeper's apiaries. A map submitted under this section is a trade secret under Chapter 552, Government Code, and may not be disclosed.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 3, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 131.046. DISPOSITION AND USE OF FEES. (a) Fees collected under this subchapter shall be deposited in the State Treasury to the credit of a special fund to be known as the bee disease control fund to be used only to defray the costs of administering and enforcing this chapter.

(b) The chief apiary inspector may sue to collect a delinquent fee under this subchapter.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 3, eff. Sept. 1, 1985.

SUBCHAPTER D. BRANDING AND IDENTIFICATION OF APIARY EQUIPMENT

Sec. 131.061. IDENTIFICATION REQUIRED. A person may not operate an apiary in this state unless the apiary equipment is:

(1) clearly and indelibly marked with the name and address of the person; or

(2) branded in accordance with Section 131.064 of this code with a brand registered to the person by the chief apiary inspector.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept.

1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 4, eff. Sept. 1, 1985.

Sec. 131.062. BRAND; REGISTRATION. (a) The chief apiary inspector shall maintain a system of registration of apiary equipment brands to identify equipment used by a beekeeper in an apiary.

(b) Each brand shall consist of three numbers separated by hyphens, with the first number signifying that the brand is a state-registered brand, the second number identifying the registrant's county of residence, and the third number identifying the registrant.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 4, eff. Sept. 1, 1985.

Sec. 131.063. REGISTRATION OF BRAND; FEE. (a) The chief apiary inspector shall register a brand for each person who applies for a brand and pays a recording fee. The inspector shall set the fee at an amount that is reasonable in relation to the costs of administering this section, but at not less than 50 cents.

(b) The inspector shall remit money collected under this section to the comptroller for deposit to the credit of the bee disease control fund.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 4, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 2.13, eff. Sept. 1, 1997.

Sec. 131.064. AFFIXING BRAND TO EQUIPMENT. A registrant shall affix the registered brand to his or her apiary equipment by burning or pressing the brand, in figures at least three-quarters of an inch high, into the wood or other material in a manner that shows the identification of equipment. The registrant shall affix the brand on one or both ends of the hive. On other equipment, including a frame, intercover, top, bottom, or plank, the registrant may affix the brand in any place.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

Sec. 131.065. TRANSFER OF BRAND. (a) A brand may be transferred only if:

(1) the chief apiary inspector approves the transfer; and

(2) the transferor is selling all of the transferor's bees and equipment to the person to whom the brand is to be transferred.

(b) If a brand is to be transferred, the seller shall give a bill of sale for the bees and equipment that shows the seller's brand.

(c) A person may sell an individual piece of branded equipment, but the brand is not transferred to the buyer. If the buyer of the equipment has a brand, the buyer shall affix the buyer's brand below the brand of the prior owner.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 4, eff. Sept. 1, 1985.

SUBCHAPTER E. LABELING AND SALE OF HONEY

Sec. 131.081. USE OF "HONEY" ON LABEL. A person may not label, sell, or keep, offer, or expose for sale a product identified on its label as "honey," "liquid or extracted honey," "strained honey," or "pure honey" unless the product consists exclusively of pure honey.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

Sec. 131.082. USE OF BEE, HIVE, OR COMB DESIGN. A person may not label, sell, or keep, expose, or offer for sale a product that resembles honey and that has on its label a picture or drawing of a bee, hive, or comb unless the product consists exclusively of pure honey.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

Sec. 131.083. SALE OF IMITATION HONEY. A person may not label, sell, or keep, expose, or offer for sale a product that resembles honey and is identified on its label as "imitation honey."

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

Sec. 131.084. SALE OF HONEY MIXTURES. (a) A person may not label, sell, or keep, expose, or offer for sale a product that consists of honey mixed with another ingredient unless:

(1) the product bears a label with a list of ingredients; and

(2) "honey" appears in the list of ingredients in the same size type of print as the other ingredients.

(b) A person may not label, sell, or keep, expose, or offer for sale a product that contains honey mixed with another ingredient and contains in the product name "honey" in a larger size of type or print or in a more prominent position than the other words in the product name.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

SUBCHAPTER F. ENFORCEMENT

Sec. 131.101. ENFORCEMENT AUTHORITY. The chief apiary inspector is the official responsible for enforcing Subchapters B, C, and D of this chapter. The Texas Department of Health is the agency responsible for enforcing Subchapter E of this chapter.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 5, eff. Sept. 1, 1985.

Sec. 131.102. ENTRY POWER. (a) The chief apiary inspector may enter at a reasonable hour any public or private premises, including a building, depot, express office, storeroom, vehicle, or warehouse, in which bees, equipment, pollen, or honey may be located to determine whether a violation of Subchapter B, C, or D of this chapter has occurred or is occurring.

(b) The Texas Department of Health may enter at a reasonable hour any public or private premises, including a building, depot, express office, storeroom, vehicle, or warehouse, in which bees, equipment, pollen, or honey may be located to determine whether a

violation of Subchapter E of this chapter has occurred or is occurring.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 5, eff. Sept. 1, 1985.

Sec. 131.103. STOP-SALE ORDER. If the official or agency responsible for enforcing a provision of this chapter or a rule or quarantine adopted under this chapter has reason to believe a colony of bees, equipment, pollen, or honey is in violation of the provision, the official or agency may issue a written order to stop the sale of the bees, equipment, pollen, or honey. When the official or agency issues a stop-sale order, the official or agency shall deliver a copy of the order to the person who possesses the bees, equipment, pollen, or honey. On receipt of the copy of the order, a person may not sell or transport the bees, equipment, pollen, or honey until the official or agency that issued the order determines that the items are in compliance with this chapter.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

Sec. 131.104. CIVIL ACTIONS. (a) The official or agency responsible for enforcing a provision of this chapter or a rule or quarantine adopted under this chapter may sue to enjoin a violation or threatened violation of the provision and may maintain other civil actions necessary to enforce this chapter.

(b) On the request of the official or agency suing under this section, the attorney general or a county or district attorney shall represent the official or agency in the civil action.

(c) A sheriff or constable shall protect the officers or employees of the official or agency in the discharge of the duties given to the official or agency by this chapter.

(d) The official or agency is not required to give bond or other security in a legal proceeding instituted or defended under this chapter in a court of this state.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

Sec. 131.105. VENUE FOR CIVIL AND CRIMINAL ACTIONS. Venue for a civil or criminal prosecution under this chapter is in the county where the affected group of bees, equipment, pollen, or honey is located at the time the violation is discovered by or made known to the official or agency.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

SUBCHAPTER G. PENALTIES

Sec. 131.121. DISEASE CONTROL. (a) A person commits an offense if the person:

(1) violates a provision of Section 131.022 or 131.023 of this code;

(2) fails to report diseased bees in accordance with Section 131.025 of this code;

(3) ships or causes bees or equipment to be shipped into this state or between counties in this state without the permit required by Section 131.041 or 131.043 of this chapter;

(4) violates a rule, order, or quarantine of the chief apiary inspector adopted under this chapter;

(5) prevents or attempts to prevent an inspection of bees, equipment, pollen, or honey under the direction of the inspector under this chapter;

(6) prevents or attempts to prevent the discovery or treatment of diseased bees;

(7) interferes with or attempts to interfere with the inspector in the discharge of the duties under this chapter;

(8) as the owner or keeper of a diseased colony of bees, barters, gives away, sells, ships, or moves diseased bees, equipment, pollen, or honey or exposes other bees to the disease;

(9) exposes honey, pollen, hives, frames, combs, bees, or appliances known to be diseased in a manner that provides access to bees; or

(10) sells, offers for sale, barters, gives away, ships, or distributes honey or pollen taken from a colony of diseased bees.

(b) An offense under this section is a Class C misdemeanor.

(c) All fines collected under this section shall be deposited in the state treasury.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 6, eff. Sept. 1, 1985.

Sec. 131.122. APIARY EQUIPMENT BRANDS. (a) A person commits an offense if the person:

(1) violates Section 131.061 of this code; or

(2) alters or attempts to alter a registered apiary equipment brand without authorization from the chief apiary inspector.

(b) An offense under this section is a Class C misdemeanor.

(c) Each of the following is prima facie evidence of an offense under this section:

(1) unauthorized possession of equipment on which the brand has been altered;

(2) possession of branded equipment without a bill of sale or written proof of ownership; or

(3) use of a registered brand that is not registered to the person using the brand.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 418, Sec. 7, eff. Sept. 1, 1985.

Sec. 131.123. LABELING OR SALE OF HONEY. (a) A person commits an offense if the person violates a provision of Subchapter E of this chapter.

(b) An offense under this section is a Class B misdemeanor.

Amended by Acts 1983, 68th Leg., p. 1884, ch. 350, Sec. 1, eff. Sept. 1, 1983.

CHAPTER 132. EGGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 132.001. DEFINITIONS. In this chapter:

(1) "Egg" means a chicken egg.

(2) "Person" means an individual, firm, corporation,

cooperative, or any other type of business entity.

(3) "Shipped egg" means an egg produced outside this state and shipped into the state for purposes of resale.

(4) "Texas egg" means an egg that is produced in this state.

(5) "Inspection" means a personal examination by an enforcement officer of the department.

Acts 1981, 67th Leg., p. 1314, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1073, Sec. 1, eff. Sept. 1, 1989.

Sec. 132.002. LIMITATION OF CHAPTER. This chapter does not apply to a person selling only eggs that are produced by the person's own flock and for which the person does not claim a grade.

Acts 1981, 67th Leg., p. 1314, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.003. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall administer this chapter and adopt and enforce necessary rules.

(b) The department may:

(1) prescribe record forms and require the reporting of information as necessary in the administration of this chapter; and

(2) make reciprocal agreements with other states for the inspection of locations outside of the state at which eggs are classed, graded, and weighed.

Acts 1981, 67th Leg., p. 1314, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 7.01, eff. Sept. 1, 1995.

Sec. 132.004. ADOPTION OF STANDARDS. Standards for the inspection and regulation of shell eggs, including quality, grade, and size of shell eggs, shall:

(1) be at least equal to those adopted by the United States Department of Agriculture and the federal Food and Drug Administration; and

(2) require that, after initial packing, shell eggs be stored at a temperature of 45 degrees Fahrenheit or less, provided, however, that any different temperature standard adopted by the United States Department of Agriculture and the federal Food and Drug Administration shall prevail.

Acts 1981, 67th Leg., p. 1314, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 7.02, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 559, Sec. 1, eff. Sept. 1, 1997.

Sec. 132.005. SAMPLES. (a) The department shall prescribe methods of selecting samples of lots or containers of eggs. The methods must be:

(1) reasonably calculated to ensure a fair representation of the entire lot or container sampled; and

(2) similar to methods prescribed for sampling by the United States Department of Agriculture.

(b) The department may enter during ordinary business hours a retail place of business where eggs are offered for sale to the ultimate consumer or a distribution center where eggs are held after being received from a packing plant and take for inspection representative samples of eggs and containers to determine if this chapter has been violated.

(c) The department shall compensate a place of business located in this state for the actual cost of eggs taken as samples under Subsection (b) of this section.

(d) A sample of eggs taken under this section or an official certificate of grade is prima facie evidence in the courts of this state of the condition of the entire lot from which the sample is taken.

Acts 1981, 67th Leg., p. 1314, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1073, Sec. 2, eff. Sept. 1, 1989.

Sec. 132.006. OUT-OF-STATE INSPECTION OF RECORDS AND EXPENSES. (a) If the grade determination and size determination required by Section 132.041 of this code is performed at a location outside of this state, the records relating to eggs of a Texas licensee at that

location are subject to inspection by the department as the department considers necessary.

(b) A licensee whose out-of-state location is inspected shall reimburse the department for actual and necessary expenses incurred during the inspection. If a licensee fails to pay those expenses before the 11th day following the day on which the licensee receives an invoice from the department, the department may:

(1) automatically cancel the person's license; or

(2) deny a license to any person who is connected with a person whose license is canceled because of a violation of this section.

(c) The actual and necessary expenses of the department for each inspection of an out-of-state location may not exceed:

(1) the actual and necessary expenses for food, lodging, and local transportation of the inspector; and

(2) the cost of the least expensive available space round trip air fare from Austin to the location to be inspected.

(d) The department shall schedule as many inspections as feasible within an area on each inspection trip. If more than one licensee is inspected in an area during an inspection trip, the expenses of the trip shall be divided equitably among the licensees inspected.

(e) The department shall perform sufficient inspections of the records of out-of-state licensees to ensure that out-of-state licensees selling eggs in Texas pay inspection fees equal to the percentage of out-of-state eggs sold in Texas. The department may contract with the comptroller of public accounts to perform such inspections.

Acts 1981, 67th Leg., p. 1315, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 915, ch. 216, Sec. 1, Sept. 1, 1983; Acts 1989, 71st Leg., ch. 1073, Sec. 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 235, Sec. 1, eff. Sept. 1, 1993.

Sec. 132.008. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCY. (a) The department shall initiate negotiations for and enter into a memorandum of understanding with the Texas Department of Health to coordinate regulatory programs and eliminate conflicting regulatory requirements and inspection standards.

(b) The department shall enter into an agreement as required by Subsection (a) with the Texas Department of Health regarding the regulation of eggs.

(c) The department and the Texas Department of Health may enter into memoranda of understanding in areas other than those under Subsections (a) and (b).

(d) A memorandum of understanding between the department and the Texas Department of Health must be adopted by the commissioner and the governing body of the Texas Department of Health.

(e) After a memorandum of understanding is adopted, the department shall publish the memorandum of understanding in the Texas Register.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 7.03, eff. Sept. 1, 1995.

SUBCHAPTER B. LICENSING

Sec. 132.021. LICENSE REQUIRED. (a) A person may not buy or sell eggs in this state for the purpose of resale without first obtaining a license from the department.

(b) This section does not apply to:

(1) a hatchery buying eggs exclusively for hatching purposes;

(2) a hotel, restaurant, or other public eating place where all eggs purchased are served by the establishment;

(3) a food manufacturer purchasing eggs for use only in the manufacture of food products, except for a person who operates a plant for the purpose of breaking eggs for freezing, drying, or commercial food manufacturing;

(4) an agent employed and paid a salary by a person licensed under this chapter; or

(5) a retailer selling eggs to the ultimate consumer of the eggs.

Acts 1981, 67th Leg., p. 1316, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 7.04, eff. Sept. 1, 1995.

Sec. 132.022. LICENSE CATEGORIES. (a) A person who is

required by Section 132.021 of this code to be licensed shall apply to the department for licensing in the category described by this section that is appropriate to the actions of the person.

(b) A person shall apply for licensing as a broker if the person never assumes ownership or possession of eggs but acts as an agent for a fee or commission in the sale or transfer of eggs between a producer or dealer-wholesaler as seller and a dealer-wholesaler, processor, or retailer as buyer.

(c) A person shall apply for licensing as a dealer-wholesaler if the person:

(1) buys eggs from a producer or other person and sells or transfers the eggs to a dealer-wholesaler, processor, retailer, consumer, or other person; or

(2) produces eggs from the dealer-wholesaler's own flock and disposes of the production on a fully graded basis.

(d) A person shall apply for licensing as a processor if the person operates a plant for the purpose of breaking eggs for freezing, drying, or commercial food manufacturing.

(e) Repealed by Acts 1995, 74th Leg., ch. 419, Sec. 10.09(16), eff. Sept. 1, 1995.

Acts 1981, 67th Leg., p. 1316, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 10.09(16), eff. Sept. 1, 1995.

Sec. 132.023. RESIDENT AGENT FOR SERVICE. Before receiving a license required by this chapter, an applicant whose home office or principal place of business is outside this state shall file with the department the name of an agent in this state for service of process in actions by the state or the department in the enforcement of this chapter.

Acts 1981, 67th Leg., p. 1316, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.024. LICENSE TERM. A license issued or renewed under this chapter is valid for one year.

Acts 1981, 67th Leg., p. 1316, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2005, 79th Leg., Ch. 44 (H.B. 901), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 6.08, eff. September 1, 2009.

Sec. 132.025. TIME FOR PAYMENT OF LICENSE FEE. (a) An applicant for an initial license shall pay the license fee prior to the issuance of the license.

(b) An applicant for the renewal of a license must pay the license fee during the last month of the license year. A person who fails to apply for a renewal license on or before the expiration date must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

Acts 1981, 67th Leg., p. 1317, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 127, eff. Sept. 1, 1989.

Sec. 132.026. FEE FOR DEALER-WHOLESALER LICENSE. (a) The license fee for each plant operated by a dealer-wholesaler is provided by department rule.

(b) The fee for an initial dealer-wholesaler's license shall be adjusted when records of the applicant's first license year are available.

(c) Repealed by Acts 1995, 74th Leg., ch. 419, Sec. 10.09(17), eff. Sept. 1, 1995.

Acts 1981, 67th Leg., p. 1317, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4285, ch. 682, Sec. 8, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.09, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.53, 10.09(17), eff. Sept. 1, 1995.

Sec. 132.027. FEE FOR PROCESSOR'S LICENSE. (a) The license fee for each plant operated by a processor is provided by department rule.

(b) The fee for an initial processor's license shall be adjusted when records of the applicant's first license year are

available.

(c) Repealed by Acts 1995, 74th Leg., ch. 419, Sec. 10.09(18), eff. Sept. 1, 1995.

Acts 1981, 67th Leg., p. 1317, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4286, ch. 682, Sec. 9, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 419, Sec. 2.54, 10.09(18), eff. Sept. 1, 1995.

Sec. 132.028. FEE FOR BROKER'S LICENSE. The department shall charge a license fee, as provided by department rule, for a broker.

Acts 1981, 67th Leg., p. 1318, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4286, ch. 682, Sec. 10, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 419, Sec. 2.55, eff. Sept. 1, 1995.

SUBCHAPTER C. GRADE DETERMINATION, SIZE DETERMINATION, AND LABELING

Sec. 132.041. GRADE DETERMINATION AND SIZE DETERMINATION. (a) Grades and sizes established for eggs sold in this state must be established by candling and weighing by a person licensed under this chapter.

(b) The candling and weighing must be made at:

(1) the licensee's place of business within this state; or

(2) a designated location outside the state.

Acts 1981, 67th Leg., p. 1318, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1073, Sec. 4, eff. Sept. 1, 1989.

Sec. 132.042. GRADING AND CLASSIFICATION REQUIRED. Eggs offered for sale shall be:

(1) classified as Texas eggs or shipped eggs, as applicable; and

(2) graded and weighed according to:

(A) consumer grade and weight classes, if the eggs are offered for sale to consumers; or

(B) wholesale grade and weight classes, if the eggs are

offered for sale at wholesale.

Acts 1981, 67th Leg., p. 1318, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.043. INSPECTION FEES. (a) A person licensed under this chapter who first establishes the grade, size, and classification of eggs offered for sale or sold in this state shall collect a fee, as provided by department rule.

(b) A processor licensed under this chapter shall pay an inspection fee, as provided by department rule, on the processor's first use or change in form of the eggs processed.

(c) Licensees required by this section to collect or pay a special fee shall remit the fee monthly in accordance with rules established by the department.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.11, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.56, eff. Sept. 1, 1995.

Sec. 132.044. LABELING REQUIREMENTS FOR EGG CONTAINERS. (a) A container in which eggs for human consumption are offered for retail or wholesale must be legibly labeled with a statement showing:

(1) the size and grade of the eggs in the container;

(2) the address, including the city and state, and the license number of the person who graded and sized the eggs; and

(3) if the eggs were sized and graded at an address other than that provided under Subdivision (2) of this subsection:

(A) the address at which the eggs were sized and graded; or

(B) a department approved code.

(b) Statements on the egg container must be in accordance with the rules of the department.

(c) A container required to be labeled under Subsection (a) of this section may not be deceptively labeled, advertised, or invoiced.

(d) If the department determines that an emergency exists that prevents or hinders labeling as provided by this section, the department may allow eggs to be labeled in another manner that includes the address and license number of a licensee and the size and grade of the eggs.

(e) The department may provide for the repacking, downgrading, or both repacking and downgrading of eggs by a retailer.

Acts 1981, 67th Leg., p. 1318, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 915, ch. 216, Sec. 2, 3, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 235, Sec. 2, eff. Sept. 1, 1993.

Sec. 132.045. SANITATION REQUIRED. (a) Eggs shall be handled under reasonably sanitary conditions in compliance with the rules of the department.

(b) After being received from the producer, shell eggs intended for human consumption shall be handled in a manner that prevents undue deterioration.

(c) Eggs in the possession of a person engaged in the sale of eggs are presumed to be intended for human consumption unless the eggs are:

(1) denatured; or

(2) labeled in accordance with a specific intended use other than human consumption.

Acts 1981, 67th Leg., p. 1319, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.046. SPECIAL REQUIREMENTS FOR SHIPPED EGGS. Shipped eggs coming into Texas in cartons ready for retail sale must be at least Grade A, as established by a Texas licensee. Shipped eggs coming into Texas loosed packed must be inspected and graded by a Texas licensee at the licensee's place of business in Texas before being sold at retail. All shipped eggs must be transported under refrigeration in compliance with the rules of the department.

Acts 1981, 67th Leg., p. 1319, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.047. UNCARTONED EGGS. (a) Eggs offered for sale that are not in a carton must be in a container that:

(1) contains all information required by Section 132.044 of this code; and

(2) displays the information in legible letters at least

one inch high on a sign attached to the container.

(b) This section does not apply to a retailer's sale of ungraded eggs if the eggs are clearly labeled as being ungraded and the retailer sells less than 120 dozen eggs a week.

Acts 1981, 67th Leg., p. 1319, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. RECORDS

Sec. 132.061. RECORDS. (a) A licensed dealer-wholesaler or processor shall keep on file for two years a complete record of all eggs bought and sold, including:

(1) the name and address of the person from whom eggs were purchased or to whom eggs were sold;

(2) the number of cases or dozens of eggs sold in each transaction; and

(3) the date of each transaction.

(b) If a person required to keep records by this section is also a retailer and has purchased eggs in less than case lots, the person need not keep records indicating to whom eggs purchased from a particular dealer-wholesaler are sold.

(c) A person required to keep records under this section shall make the records available for inspection by the department at all reasonable times.

Acts 1981, 67th Leg., p. 1319, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.062. INVOICE. A licensed dealer-wholesaler or processor shall:

(1) deliver with each transaction, sale, or delivery a signed invoice stating the date, quantity, grade, and size of eggs sold; and

(2) keep a copy of the invoice for two years.

Acts 1981, 67th Leg., p. 1320, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. ENFORCEMENT

Sec. 132.071. STOP-SALE ORDER. (a) If the department determines that eggs are not in compliance with this chapter, the

department shall issue and enforce an order to stop the sale of the eggs.

(b) A person may not sell eggs to which a stop-sale order applies until the department determines that the eggs are in compliance with this chapter.

(c) A person to whom a stop-sale order is issued may submit the eggs for reinspection to an authorized United States Department of Agriculture inspector. If on reinspection the eggs fail to meet the specifications of the grades with which they are labeled, the seller must re-mark or re-package the eggs to meet the specifications for their actual grades before selling the eggs.

Acts 1981, 67th Leg., p. 1320, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.0715. CIVIL PENALTY; INJUNCTION. (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.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty in a legal action on behalf of the state.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 128, eff. Sept. 1, 1989.

Sec. 132.072. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1320, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 129, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.27, eff. Sept. 1, 1995.

SUBCHAPTER F. PENALTIES

Sec. 132.081. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter.

(b) An offense under this chapter is a misdemeanor punishable by a fine of not less than $50 nor more than $1,000.

Acts 1981, 67th Leg., p. 1320, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.082. SELLING INEDIBLE EGGS. (a) A person commits an offense if the person sells, in bulk or in containers, eggs that are not denatured and are inedible for any reason, including eggs that

are:

(1) leakers;

(2) affected by black, white, or mixed rot;

(3) addled;

(4) incubated; or

(5) contaminated by a blood ring or an embryo chick at or beyond the blood-ring stage.

(b) It is an exception to the application of this section that:

(1) the inedible eggs do not exceed five percent by count of the eggs sold; and

(2) the eggs are sold to:

(A) a dealer for candling and grading; or

(B) a breaking plant for breaking purposes.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $1,000.

Acts 1981, 67th Leg., p. 1320, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.083. IMPROPER USE OF THE PREFIX "U.S." (a) A person commits an offense if the person uses the prefix "U.S." on grades and weight classes of shell eggs that are not graded under official United States Department of Agriculture supervision.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $1,000.

Acts 1981, 67th Leg., p. 1321, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 132.084. MISLEADING ADVERTISING. (a) A person commits an offense if the person:

(1) advertises or sells shell eggs below the quality of Grade A by describing the eggs as "fresh," "yard," "selected," "hennery," "new-laid," "infertile," "cage," or with words that have similar meaning; or

(2) advertises eggs by price without also indicating the full, correct, and unabbreviated designation of size and grade of the eggs.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $1,000.

Acts 1981, 67th Leg., p. 1321, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 134. REGULATION OF AQUACULTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001. DEFINITIONS. In this chapter only:

(1) "Cultured species" means aquatic animals raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

(2) "Exotic species" means a nonindigenous plant or animal not normally found in the public waters in the state.

(3) "Aquaculturist" or "fish farmer" means any person engaged in aquaculture or fish farming.

(4) "Aquaculture" or "fish farming" means the business of producing and selling cultured species raised in private facilities. Aquaculture or fish farming is an agricultural activity.

(5) "Private facility" means a pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water or within or on permitted public land or water.

(6) "Operator" means any person or entity in control of or having responsibility for the daily operation of an aquaculture facility.

(7) "Commercial aquaculture facility" means an aquaculture facility designed primarily for the production of cultured species for the purposes of sale, barter, or exchange.

(8) "New aquaculture facility" means a commercial aquaculture facility whose owner or operator initially sought waste discharge authorization from the Texas Natural Resource Conservation Commission after January 19, 1999.

(9) "Coastal zone" has the meaning assigned by Section 33.004, Natural Resources Code.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.001 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1999.

Sec. 134.002. AQUACULTURE PROGRAM. The department may:

(1) promote aquaculture products;

(2) provide technical assistance, including demonstrations, to aquaculturists;

(3) provide coordinated support through colleges and universities and other governmental entities;

(4) solicit financial support from the federal government for the aquaculture industry;

(5) develop and expand the aquaculture industry to:

(A) stimulate the state's economy; and

(B) offer alternative crop opportunities; and

(6) perform other functions and activities as required by law.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1999.

Sec. 134.003. PROGRAM ADMINISTRATOR; STAFF. (a) The department shall designate a person to administer the department's aquaculture program.

(b) The department or the department's program administrator may employ the necessary staff to carry out the functions and duties of the department under this chapter.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1999.

Sec. 134.004. CONTRACTS. The department, the Texas Natural Resource Conservation Commission, the Texas Animal Health Commission, and the Parks and Wildlife Department may contract with state, federal, or private entities for assistance in carrying out the purposes of this chapter.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1999.

Sec. 134.005. RULES. (a) The department and the Parks and Wildlife Commission shall adopt rules to carry out their respective duties under this chapter.

(b) The department by rule shall establish record-keeping requirements for a commercial aquaculture facility.

(c) The rules may not conflict with rules issued under Section 134.020.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1999.

Sec. 134.006. AQUACULTURE FUND. (a) The aquaculture fund is established in the state treasury.

(b) The department shall deposit to the credit of the fund the fees received from licenses issued under this chapter.

(c) The aquaculture fund may be used only to administer this chapter.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. AQUACULTURE LICENSE

Sec. 134.011. LICENSING. (a) A person may not operate an aquaculture facility without first having acquired from the department an aquaculture license.

(b) The department shall:

(1) maintain an application process for an aquaculture license;

(2) license aquaculture facilities; and

(3) regulate aquaculture operations.

(c) The department shall provide a copy of each aquaculture license application to the Parks and Wildlife Department and the Texas Natural Resource Conservation Commission.

(d) The department may not issue a license for a new aquaculture facility unless the facility has been authorized by the Texas Natural Resource Conservation Commission to dispose of wastewater or the facility will not dispose of wastewater into waters

in the state.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.002 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 2, eff. Sept. 1, 1999.

Sec. 134.012. FISH FARM VEHICLE LICENSE REQUIRED. (a) Except as provided by Subsection (b), if a vehicle is used to transport cultured species from a private facility and the cultured species are sold from the vehicle, the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of an aquaculture license.

(c) A person who operates a vehicle that is owned by the holder of an aquaculture license must keep a copy of the license in the vehicle when transporting cultured species from a private facility.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.003 by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 2, eff. Sept. 1, 1999.

Sec. 134.013. ADDITIONAL REQUIREMENTS FOR SHRIMP PRODUCTION WITHIN THE COASTAL ZONE. (a) A commercial aquaculture facility located within the coastal zone and engaged in the production of shrimp:

(1) must obtain a site-specific wastewater discharge permit from the Texas Natural Resource Conservation Commission before the facility may discharge wastewater if the facility will discharge wastewater or another substance into waters in the state;

(2) must provide the report described in Subsection (b) and is subject to the review described in Section 134.031(c) if the aquaculture facility applies for a site-specific discharge permit;

(3) must obtain an amendment to its site-specific discharge permit from the Texas Natural Resource Conservation Commission before the facility may increase the amount of discharge or change the

nature of the discharge above levels allowed by the wastewater discharge permit issued by the Texas Natural Resource Conservation Commission, except as otherwise provided by Section 26.0191, Water Code; and

(4) must provide the report described by Subsection (b) and is subject to the review described in Section 134.031(c) before the facility may increase the amount of discharge, or change the nature of the discharge above levels allowed by the wastewater discharge permit issued by the Texas Natural Resource Conservation Commission, except as otherwise provided by Section 26.0191, Water Code.

(b) Before issuing a license to a new aquaculture facility designed for the commercial production of shrimp that will discharge wastewater into waters in the state within the coastal zone, the department shall require the applicant to provide a report describing the existing environmental conditions at the proposed site, including aquatic habitat and the conditions of the waters in the state into which a discharge is proposed. The report must provide an assessment of any potential impacts of wastewater discharges on sensitive aquatic habitats in the area of the proposed site, significant impacts related to the construction or operation of the facility, and any mitigation actions proposed by the applicant.

(c) The applicant must provide the report required under Subsection (b) to the Texas Natural Resource Conservation Commission and the Parks and Wildlife Department. The Texas Natural Resource Conservation Commission may not issue a wastewater discharge permit to a new aquaculture facility designed for the commercial production of shrimp and located within the coastal zone without consideration of the report described by Subsection (b).

(d) In coordination with the department and the Parks and Wildlife Department, the Texas Natural Resource Conservation Commission shall establish guidelines relating to the report required by Subsection (b) that:

(1) give public notice as to what the reporting requirements include; and

(2) minimize duplication of reporting requirements and other requirements related to the application for a wastewater discharge permit.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975.
Renumbered from Parks & Wildlife Code, Sec. 48.004 and amended by

Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 2, eff. Sept. 1, 1999.

Sec. 134.014. LICENSE FEES; WAIVERS. (a) The department shall issue an aquaculture license or a fish farm vehicle license on completion of applicable license requirements and the payment of a fee by the applicant, as provided by department rule.

(b) The department by rule shall waive the initial and renewal aquaculture license fees if the license or license renewal is requested by a public school to establish and maintain an educational program that will give students experience with a sustainable system of agriculture that mixes aquaculture and hydroponics. To qualify for the fee waiver, the school must submit an application to the department showing that the school's program meets the department's requirements, including requirements for supervision, handling of the fish species, and control of wastes.

Renumbered from Parks & Wildlife Code, Sec. 48.005 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.57, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1239, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 265, Sec. 7, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 259 (S.B. 1204), Sec. 1, eff. May 29, 2015.

Sec. 134.015. FORM, DURATION, AND RENEWAL OF LICENSE. (a) An aquaculture license must be on a numbered form provided by the department.

(b) A license is valid for 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.

(c) The department may suspend an aquaculture license if it is determined that the licensee has violated this chapter, a rule adopted under this chapter, or Section 66.007, Parks and Wildlife Code.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.006 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.58, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1239, Sec. 3, eff. Sept. 1, 1999.

Sec. 134.016. RECORDS. (a) The holder of an aquaculture license shall maintain a record of sales of cultured species for a period of time of not less than one year. The record is open for inspection by designated employees of the Parks and Wildlife Department and the department during normal business hours.

(b) A record of sale for commercially protected finfish as provided by Section 66.020, Parks and Wildlife Code, shall contain at least the following information:

(1) invoice number;

(2) date of shipment;

(3) name and address of shipper;

(4) name and address of receiver; and

(5) number and weight of whole fish or fillets, by species, contained in the shipment.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.008 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 4, eff. Sept. 1, 1999.

Sec. 134.017. CULTURE AND SALE OF CULTURED SPECIES. Cultured species of any kind, size, or number may be raised, possessed, transported, and sold anywhere, at any time, to any person, for any purpose by the holder of an aquaculture license unless prohibited by Parks and Wildlife Code or regulation.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.009 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991.

Sec. 134.018. LICENSE NOT REQUIRED FOR SALE OF CERTAIN FISH. (a) An aquaculture license is not required for the sale of fish:

(1) that are not on the Parks and Wildlife Department's list of exotic fish, shellfish, and aquatic plants;

(2) collected from a private facility on private land by a person who holds an aquaculture license;

(3) by the owner of the private facility from which the fish were collected;

(4) to manage the fish population in the private facility; and

(5) to a person who holds an aquaculture license.

(b) Not later than the 30th day after the sale of fish under this section, the buyer who holds an aquaculture license shall submit a copy of the invoice for the sale to the Parks and Wildlife Department. The seller and the buyer shall maintain a record of the sale for not less than one year. The record must contain at least:

(1) the invoice number;

(2) the date of the sale;

(3) the name and address of the seller;

(4) the physical location of the facility from which the fish were collected;

(5) the name, address, and aquaculture license number of the buyer; and

(6) the number of fish sold.

(c) Sections 66.020 and 66.111, Parks and Wildlife Code, do not apply to a sale under this section.

Added by Acts 2005, 79th Leg., Ch. 759 (H.B. 3024), Sec. 1, eff. September 1, 2005.

Sec. 134.019. MARKETING OF CULTURED REDFISH AND CULTURED SPECKLED SEA TROUT. (a) The commissioner shall adopt rules providing for the raising, sale, transportation, and possession of

cultured redfish and cultured speckled sea trout raised by an aquaculturist licensed under this chapter.

(b) The rules shall provide for and require the identification of cultured redfish and cultured speckled sea trout raised by an aquaculturist under this chapter.

Renumbered from Parks & Wildlife Code, Sec. 48.0101 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991.

Sec. 134.020. EXOTIC SPECIES. (a) The Parks and Wildlife Commission shall adopt rules regulating the importation, possession, propagation, and sale of harmful or potentially harmful exotic species by an aquaculturist.

(b) The Parks and Wildlife Commission, after consulting with the commissioner and an individual designated by the chairman of the board of regents of The Texas A&M University System, shall determine and publish a list of harmful or potentially harmful exotic species that an aquaculturist may not import, possess, or sell as part of the person's aquaculture activities.

(c) An aquaculturist may not release in public water harmful or potentially harmful exotic species except as provided by Section 66.007, Parks and Wildlife Code.

(d) The Parks and Wildlife Department shall enforce the rules adopted under this section.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991.

Sec. 134.021. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual aquaculture projects.

Acts 1975, 64th Leg., ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Parks & Wildlife Code, Sec. 48.011 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991.

Sec. 134.022. AQUACULTURE FACILITY PROTECTED. (a) A person, other than the owner or operator of an aquaculture facility, may not fish on an aquaculture facility without the consent of the owner or operator.

(b) A person may not unlawfully, as defined by Section 31.03(b), Penal Code, acquire or otherwise exercise control over cultured species with intent to deprive the owner of the cultured species.

Renumbered from Parks & Wildlife Code, Sec. 48.013 and amended by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991.

Sec. 134.023. PENALTIES. (a) Except as provided by Subsection (b), (c), or (d) of this section, a person who violates any provision of this chapter or rule adopted under this chapter commits an offense that is a Class C misdemeanor.

(b) A person who violates Section 134.019 or 134.020 commits an offense that is a Class B misdemeanor.

(c) A person who violates Section 134.022(b) of this code by taking cultured species of a value of $200 or more but less than $750 commits an offense that is a Class A misdemeanor.

(d) A person who violates Section 134.022(b) of this code by taking cultured species of a value of $750 or more commits an offense that is a felony of the third degree.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 11, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER C. INTERAGENCY COOPERATION

Sec. 134.031. MEMORANDUM OF UNDERSTANDING. (a) The department, the Texas Natural Resource Conservation Commission, and the Parks and Wildlife Department shall enter into a memorandum of understanding for the regulation of matters related to aquaculture.

(b) The Texas Natural Resource Conservation Commission, after receiving an application for a wastewater discharge authorization from an aquaculture facility, shall provide a copy of the application to the department and the Parks and Wildlife Department.

(c) The department, the Texas Natural Resource Conservation Commission, and the Parks and Wildlife Department shall each appoint one member of a three-member application review committee to review the wastewater discharge authorization application to ensure that the proposed discharge will not adversely affect a bay, an estuary, or other waters in the state.

(d) The Parks and Wildlife Department, in consultation with the Texas Natural Resource Conservation Commission, may establish general guidelines that identify sensitive aquatic habitat within the coastal zone. The general guidelines must include factors such as the presence of sea grass beds, depth of receiving waters, and amount of tidal exchange.

(e) If the Parks and Wildlife Department establishes the guidelines described in Subsection (d), the Parks and Wildlife Department must provide the guidelines to the Texas Natural Resource Conservation Commission and the department.

(f) If the Parks and Wildlife Department has established the guidelines described in Subsection (d), the Texas Natural Resource Conservation Commission must consider the guidelines when reviewing wastewater discharge authorization applications for new aquaculture facilities located within the coastal zone, or expansion of existing facilities located within the coastal zone if the expansion will increase the amount of discharge, or change the nature of the discharge, above levels allowed by the wastewater discharge permit.

(g) In developing the guidelines under Subsection (d) applicable to aquaculture facilities engaged in the production of shrimp in the coastal zone, the Parks and Wildlife Department, in consultation with the Texas Natural Resource Conservation Commission, shall consider the best management practices that the facilities developed under the direction of the Texas Natural Resource Conservation Commission.

(h) In the development of siting guidelines for aquaculture facilities engaged in the production of shrimp in the coastal zone, the best management practices developed by the facilities shall be considered.

Added by Acts 1999, 76th Leg., ch. 1239, Sec. 6, eff. Sept. 1, 1999.

SUBTITLE B. LIVESTOCK

CHAPTER 141. COMMERCIAL FEED

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 141.001. DEFINITIONS. In this chapter:

(1) "Animal" means an animate being that is not human and has the power of voluntary action.

(2) "Board" means the board of regents of The Texas A&M University System.

(3) "Broker" means a person who is employed on a commission basis to sell property for another person. The term does not include a person who:

(A) has possession or absolute control over the property that is to be sold;

(B) receives a salary; or

(C) acts for one party to the exclusion of all others.

(4) "Bulk" means any lot of commercial feed that is not in a closed container at the time it passes to the possession of the consumer and includes that feed at any stage of distribution.

(5) "Container" means a bag, box, barrel, bottle, package, carton, object, apparatus, device, or appliance in which commercial feed is packed, stored, or placed for handling, transporting, or distributing.

(6) "Cotton plant by-products" means the residue from the ginning of cotton.

(7) "Customer-formula feed" means a mixture of commercial feed or feed material all or part of which is furnished by the person who processes, mixes, mills, or otherwise prepares the mixture and which is mixed according to the specific instructions of the purchaser. The term includes a special formula feed or a made-to-order feed.

(8) "Director" means the director of the Texas Agricultural Experiment Station.

(9) "Distribute" means sell, offer for sale, barter, exchange, or otherwise supply.

(10) "Feed facility" means a site where feed, a component of feed, or feed ingredients are mixed, custom blended, ground, unground, manufactured, milled, bagged, salvaged, or processed.

(11) "Ingredient" means a constituent material of commercial feed.

(12) "Label" means a display of written, printed, or graphic matter on or affixed to or wrapped with a container or on an

invoice or delivery slip.

(13) "Licensee" means a person who obtains a license to operate a feed facility under this chapter.

(14) "Official sample" means a sample of feed taken by the service and designated as official by the service.

(15) "Product" means the name of the commercial feed that identifies it as to kind, class, or specific use and includes the brand, term, trademark, or other specific designation under which commercial feed is distributed in this state.

(16) "Purchaser" means a person who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill service.

(17) "Service" means the Texas Feed and Fertilizer Control Service.

(18) "Ton" means a net weight of 2,000 pounds avoirdupois or 1,000 kilograms metric.

(19) "Weight" means net weight of a container of commercial feed expressed in either the avoirdupois or metric system.

Acts 1981, 67th Leg., p. 1323, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1858, ch. 349, art. 2, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 107, Sec. 1, eff. May 17, 1985; Acts 1995, 74th Leg., ch. 314, Sec. 1, eff. Jan. 1, 1996.

Sec. 141.002. COMMERCIAL FEED. (a) Except as otherwise provided by this section, a material is a commercial feed subject to this chapter if it is a simple, mixed, compounded, ground, unground, organic, or inorganic material used as a feed for an animal, including a vitamin, mineral, antibiotic, antioxidant, medicine, drug, chemical, or other material used as an ingredient or component of a mixture of materials used as a feed for an animal.

(b) Except as specifically provided by this chapter, a customer-formula feed is a commercial feed subject to this chapter.

(c) The following are not commercial feeds subject to this chapter:

(1) unground hay not containing toxins or chemical adulterants;

(2) whole grain or whole seed not containing toxins or chemical adulterants;

(3) unadulterated cotton plant by-products or any unadulterated hulls;

(4) a feed product produced and sold by a farmer;

(5) a feed mixed and used by a person who contracts with the owner of animals to care for and feed the animals;

(6) an individual mineral substance not mixed with another material;

(7) a material furnished by a purchaser for use in a customer-formula feed that was produced by the purchaser or acquired by the purchaser from a source other than the person whose services are engaged in the milling, mixing, or processing of a customer-formula feed; or

(8) a feed or feed ingredient handled by a broker.

(d) Regardless of whether a claim is made as to the prophylactic, therapeutic, or other purpose of the material, a mineral, vitamin, antibiotic, antioxidant, medicine, drug, or other material may be added to a commercial feed only if and in the manner authorized by the rules of the service. If a guarantee or claim is made for the material, the material is subject to inspection and analysis in accordance with the rules of the service.

(e) Whole seed and whole grain offered for retail sale for wildlife feed are commercial feeds subject to this chapter.

Acts 1981, 67th Leg., p. 1324, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1860, ch. 394, art. 2, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 107, Sec. 2, eff. May 17, 1985; Acts 1995, 74th Leg., ch. 314, Sec. 2, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 1274, Sec. 1, eff. Sept. 1, 1999.

Sec. 141.003. ADMINISTRATION. (a) The Texas Feed and Fertilizer Control Service is under the direction of the director of the Texas Agricultural Experiment Station, who is responsible for exercising the powers and performing the duties assigned to the service by this chapter.

(b) The service may employ personnel necessary to perform its duties.

(c) The director may appoint a state chemist whose responsibilities may include the making of chemical analyses and tests required by this chapter.

Acts 1981, 67th Leg., p. 1324, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1861, ch. 349, art. 2, Sec. 3, eff. Sept. 1, 1983.

Sec. 141.004. RULES; MINIMUM STANDARDS. Following notice and public hearing, the service may adopt rules as necessary for the enforcement of this chapter, including rules defining and establishing minimum standards for commercial feed. To the extent practicable, rules that define and establish minimum standards for commercial feed must be in harmony with the official standards of the Association of American Feed Control Officials.

Acts 1981, 67th Leg., p. 1324, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1861, ch. 349, art. 2, Sec. 3, eff. Sept. 1, 1983.

Sec. 141.005. PUBLICATIONS. (a) At least annually, the service shall publish:

(1) information concerning the sales of commercial feeds, together with data on commercial feed production and use as the service considers advisable;

(2) the results of the analyses of official samples of commercial feed distributed in this state as compared to the analyses guaranteed in the registration and on the label; and

(3) a financial statement showing the receipt and expenditure of funds by the service under this chapter.

(b) The service may publish other information relating to feed as the service considers necessary or desirable to the public interest. The service shall prescribe the form of publications under this section.

(c) A publication under this section may not disclose the scope of operations of any person.

Acts 1981, 67th Leg., p. 1325, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1861, ch. 349, art. 2, Sec. 3, eff. Sept. 1, 1983.

Sec. 141.006. CUSTOM PROCESSING. This chapter does not apply

to the mixing, milling, or processing of a material produced by a purchaser of commercial feed or acquired by the purchaser from a source other than the person who mixes, mills, or processes the material.

Acts 1981, 67th Leg., p. 1325, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 141.007. AFLATOXIN CONTROL. The service shall establish by rule aflatoxin contamination levels considered safe for whole seed and whole grain offered for retail sale for wildlife feed.

Added by Acts 1999, 76th Leg., ch. 1274, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. LICENSE

Sec. 141.021. LICENSE REQUIRED. (a) A person may not manufacture or distribute commercial feed in this state without a valid current license issued by the service for each feed facility that manufactures or distributes commercial feed. A person making only retail sales of commercial feed bearing the label of a licensed manufacturer, guarantor, or distributor is not required to obtain a license.

(b) An application for a license shall be submitted on a form prescribed and provided by the service and accompanied by a license fee not to exceed $75 for each facility, as provided by department rule.

(c) A licensee or license applicant shall provide the service copies of labels and labeling and other information that the service by rule requires.

(d) A person applying for a license after the 30th day following receipt of notice to obtain a license and a licensee applying late for a license renewal shall pay a $75 late fee in addition to the license fee.

Acts 1981, 67th Leg., p. 1325, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1862, ch. 349, art. 2, Sec. 4, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 4, eff. Jan. 1, 1996.

Sec. 141.023. TERM OF LICENSE. A license issued under this chapter is permanent unless:

(1) the service revokes, suspends, annuls, or amends the license;

(2) the licensee withdraws or cancels the license;

(3) the licensee's report to the service indicates no activity for one year; or

(4) the service requires a new license.

Acts 1981, 67th Leg., p. 1326, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1862, ch. 349, art. 2, Sec. 4, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 5, eff. Jan. 1, 1996.

Sec. 141.025. REFUSAL OR REVOCATION OF LICENSE. Following notice and a hearing, the service may revoke, suspend, annul, or amend an existing license or may refuse to issue a license if it finds that the licensee or applicant has:

(1) been convicted of a crime for which a license may be revoked, suspended, annulled, amended, or refused under Chapter 53, Occupations Code;

(2) refused or after notice failed to comply with this chapter and rules adopted under this chapter; or

(3) used fraudulent or deceptive practices in attempting evasion of this chapter or a rule adopted under this chapter.

Added by Acts 1983, 68th Leg., p. 1862, ch. 349, art. 2, Sec. 4, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 6, eff. Jan. 1, 1996. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.723, eff. Sept. 1, 2001.

SUBCHAPTER C. LABELING

Sec. 141.051. LABELING OF COMMERCIAL FEED. (a) Except as provided by Subsection (d) of this section, each container of commercial feed distributed in this state, other than customer-formula feed, must have a label with the following information:

(1) the name and principal address of the person responsible for manufacture and distribution;

(2) the brand or name under which the feed is to be

distributed;

(3) the quantity of the feed in the container, in either net weight, net volume contents, or net fluid content according to rules adopted by the service;

(4) the guaranteed analysis of nutrients in the feed, listing a maximum or minimum quantity determinable by laboratory methods of protein, fat, fiber, and other components of commercial feed;

(5) the common or usual name of each ingredient used in the feed;

(6) the name and percentage of any hulls, shells, screenings, straw, stalks, corncobs, or other low grade feeding materials or fillers in the feed, if any;

(7) an appropriate warning statement and directions for use relating to each medicine, drug, mineral, vitamin, antibiotic, or antioxidant in the feed; and

(8) other information that the service may by rule require.

(b) The manufacturer or other person distributing the feed shall affix the label required by this section to the outside of the container or cause it to be printed on the side of the container in the manner prescribed by the service. The information must be grouped together and plainly printed in English in the size of type prescribed by the service.

(c) If the labeling information is shown on the container rather than printed on the label, the information must be plainly printed in a conspicuous place in the size of type prescribed by the service.

(d) A person distributing in this state commercial feed in a container that holds an amount exceeding 110 pounds dry weight or 55 gallons liquid need not label the container in accordance with this section, but shall furnish the purchaser with a statement of the information in accordance with Section 141.052 of this chapter.

Acts 1981, 67th Leg., p. 1326, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1865, ch. 349, art. 2, Sec. 5, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 7, eff. Jan. 1, 1996.

Sec. 141.052. LABELING OF BULK COMMERCIAL FEED. At the time of

delivery of bulk commercial feed distributed in this state, other than customer-formula feed, the manufacturer or other person distributing the feed shall furnish the purchaser with a written or printed statement showing the information required by Section 141.051(a) of this code.

Acts 1981, 67th Leg., p. 1326, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1865, ch. 349, art. 2, Sec. 5, eff. Sept. 1, 1983.

Sec. 141.053. LABELING OF CUSTOMER-FORMULA FEED. (a) Except as provided by Subsection (b) of this section, a person distributing customer-formula feed in this state shall furnish to the purchaser at the time of delivery a label showing:

(1) the name and address of the mixer, miller, or processor;

(2) the name and address of the purchaser;

(3) the date of sale;

(4) the name or brand and the number of pounds of each registered commercial feed used in the mixture; and

(5) the name and number of pounds of each other ingredient added to the mixture, including any ingredient supplied by the purchaser.

(b) If all ingredients for a customer-formula feed are furnished by the mixer, miller, or processor, the service may permit a customer-formula feed to be identified by means of an identifying name, number, or similar designation rather than by listing the ingredients under Subsections (a)(4) and (a)(5) of this section. The service may adopt rules and prescribe forms for identification of a customer-formula feed under this subsection.

Acts 1981, 67th Leg., p. 1327, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg. p. 1865, ch. 349, art. 2, Sec. 5, eff. Sept. 1, 1983.

Sec. 141.054. GENERAL LABEL RESTRICTIONS. Except as authorized by this chapter or a rule of the service, the label of a commercial feed may not:

(1) advertise, name, promote or otherwise draw attention to

one or more components or ingredients in the product unless the percentage and common name of the component or ingredient is clearly and prominently declared;

(2) contain the name of another manufacturer or person or a product of another manufacturer or person; or

(3) contain a false, deceptive, or misleading statement.

Acts 1981, 67th Leg., p. 1327, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1865, ch. 349, art. 2, Sec. 5, eff. Sept. 1, 1983.

Sec. 141.055. REQUEST FOR LABEL REVIEW. (a) The service shall:

(1) by rule adopt procedures that allow a licensee to submit a product label to the service for review;

(2) review each product label submitted by a licensee to determine compliance with the labeling requirements of this subchapter;

(3) make a detailed report to the licensee regarding changes to the label required for compliance with the service's rules; and

(4) provide the licensee with the advice that the service considers necessary to enable the licensee to comply with the service's labeling rules.

(b) The service may not charge a fee for a review, a report, or advice under this section.

Added by Acts 1995, 74th Leg., ch. 314, Sec. 8, eff. Jan. 1, 1996.

SUBCHAPTER D. INSPECTION FEE

Sec. 141.071. INSPECTION FEE. (a) For each state fiscal year, a person who manufactures or distributes commercial feed or a component of commercial feed in this state, including a person who mixes, mills, or processes customer-formula feed, shall pay to the service an inspection fee prescribed by this section.

(b) Except as otherwise provided by this section, the inspection fee is 15 cents per ton of commercial feed. With the approval of the board, the director may reduce or increase the inspection in increments of 1 cent up to a maximum of 2 cents per

fiscal year, except that the board and director shall reduce the inspection fee by 1 cent increments when the balance of the Texas feed control fund exceeds one-half the projected operating expenses of the service for the next fiscal year.

(c) A person distributing in this state a commercial feed product packaged in individual containers of five pounds or less shall pay, for each distinct commercial feed product so distributed, a flat rate inspection fee of $50 for each fiscal year or part of a fiscal year in which the distribution is made.

(d) A licensee paying an inspection fee under Subsection (b) of this section shall pay in advance a minimum annual inspection fee of $100 per fiscal year. All advance inspection fees collected under this section shall be credited towards the first tonnage inspection fee owed by the licensee accruing in that fiscal year.

(e) A person is not required to pay an inspection fee on a portion of a customer-formula feed that is produced by the purchaser or acquired by the purchaser from a source other than the person who mixes, mills, or processes the mixture.

(f) The service by rule may provide that a person is not required to pay an inspection fee on commercial feed that the person manufactures or distributes solely for investigational, experimental, or laboratory use by qualified persons, if the investigation or experiment is conducted in the public interest.

Acts 1981, 67th Leg., p. 1327, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1868, ch. 349, art. 2, Sec. 6, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 9, eff. Jan. 1, 1996.

Sec. 141.072. QUARTERLY TONNAGE REPORTING AND INSPECTION FEE PAYMENT. (a) The person responsible for paying the inspection fee for a feed facility generating $100 or more during a license year in tonnage fees shall file with the service a quarterly sworn report either stating that no tonnage of commercial feed was distributed during the preceding quarter or setting forth the tonnage of all commercial feed that the feed facility manufactured or distributed in this state during the preceding quarter. Each quarterly tonnage report must be accompanied by payment of the inspection fee due based on the tonnage reported for that quarter.

(b) The person responsible for paying the inspection fee for a feed facility producing less than $100 a license year in tonnage fees shall file with the service an annual sworn report either stating that no tonnage of commercial feed was distributed during the preceding license year or stating the tonnage of all commercial feed the facility manufactured and distributed in this state during the preceding license year. Each annual tonnage report must be accompanied by payment of the inspection fee due based on the tonnage reported for that year.

(c) A quarterly tonnage report and inspection fee payment is due on or before the 31st day following the last day of November, February, May, and August for persons reporting quarterly. An annual tonnage report and inspection fee payment is due on or before the 31st day following the last day of August for persons reporting annually.

(d) The service may prescribe and furnish forms as necessary under this section.

Acts 1981, 67th Leg., p. 1328, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.073 and amended by Acts 1983, 68th Leg., p. 1868, ch. 349, art. 2, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 314, Sec. 10, eff. Jan. 1, 1996.

Sec. 141.073. PENALTY FOR LATE FILING OR PAYMENT. (a) If a person paying the inspection fee on the basis of tonnage reporting does not file a quarterly report or pay the fee before the 31st day following the last day of a quarter, the person shall pay a penalty equal to 15 percent of the inspection fee due or $50, whichever is greater.

(b) The penalty together with any delinquent inspection fee is due before the 61st day following the last day of the quarter. The service shall cancel the license of a licensee who fails to pay the penalty and delinquent inspection fee within that time period after notice.

Acts 1981, 67th Leg., p. 1328, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.074 and amended by Acts 1983, 68th Leg., p. 1868, ch. 349, art. 2, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 314, Sec. 11, eff. Jan. 1, 1996.

Sec. 141.074. RECORDS; ADDITIONAL REPORTS; AUDITS. (a) For the purpose of determining the accurate tonnage of commercial feed distributed in this state or identify or verify tonnage reports, the service may require each licensee to maintain records or file additional reports.

(b) The service is entitled to examine at reasonable times the records maintained under this section.

(c) Unless otherwise authorized by the service, a licensee shall preserve and maintain the records under this section in usable condition for at least two years. The service may require a licensee to retain the records for a period longer than two years if the service determines it to be in the public interest.

(d) If a licensee is located outside this state, the licensee shall maintain records required under this section in this state or pay all costs incurred in the auditing of the records at another location. The service shall promptly furnish to the licensee an itemized statement of any costs incurred in an out-of-state audit and the licensee shall pay the costs before the 31st day following the date of the statement.

(e) A record or report maintained or filed under this section is confidential and not subject to required disclosure under Chapter 552, Government Code.

Acts 1981, 67th Leg., p. 1329, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.075 and amended by Acts 1983, 68th Leg., p. 1868, ch. 349, art. 2, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 314, Sec. 12, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 967 (H.B. 1733), Sec. 1, eff. June 18, 2005.

Sec. 141.075. DISPOSITION AND USE OF FEES. (a) The service shall deposit fees collected under this subchapter in the same manner that other local institutional fees of The Texas A&M University System are collected. The fees shall be set apart as a special fund known as the Texas feed control fund.

(b) The Texas feed control fund shall be used, with the approval and consent of the board, for administering this chapter, including paying the cost of:

(1) equipment and facilities;
(2) inspection, sampling, and analysis;
(3) licensing;
(4) salaries; and
(5) publication of bulletins and reports.

(c) Fees collected under this subchapter that, in the judgment of the board, are not needed for the administration of this chapter may be used for research relative to the value of commercial feed.

Acts 1981, 67th Leg., p. 1329, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.077 and amended by Acts 1983, 68th Leg., p. 1868, ch. 349, art. 2, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 314, Sec. 13, eff. Jan. 1, 1996.

SUBCHAPTER E. INSPECTION, SAMPLING, AND ANALYSIS

Sec. 141.101. INSPECTION AND SAMPLING; ENTRY POWER. In order to determine if feed is in compliance with this chapter, the service is entitled to:

(1) enter during regular business hours and inspect any place of business, mill, plant building, or vehicle and to open any container, bin, vat or parcel that is used in the manufacture, transportation, importation, sale, or storage of commercial feed or is suspected of containing a commercial feed; and
(2) take samples from feed found during that inspection.

Acts 1981, 67th Leg., p. 1330, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1873, ch. 349, art. 2, Sec. 7, eff. Sept. 1, 1983.

Sec. 141.102. PROCEDURE FOR SAMPLING AND ANALYSIS. The service by rule shall prescribe the procedures for sampling and analysis of commercial feed. The procedures must, to the extent practicable, be in accordance with the official methods of the Association of Official Analytical Chemists or other methods that the service determines authentic by research and investigation.

Acts 1981, 67th Leg., p. 1330, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1873, ch. 349, art. 2, Sec. 7, eff. Sept. 1, 1983.

Sec. 141.103. IDENTIFICATION OF SAMPLE. (a) Each sample taken shall be sealed with a label placed on the container of the sample showing:

(1) the serial number of the sample;

(2) the date on which the sample was taken; and

(3) the signature of the person who took the sample.

(b) Each sample shall be sent to the service. In addition, a report shall be sent to the service stating:

(1) the name or brand of the commercial feed or material sampled;

(2) the serial number of the sample;

(3) the manufacturer or guarantor of the lot sampled, if known;

(4) the name of the person in possession of the lot sampled;

(5) the date and place of taking the sample; and

(6) the name of the person who took the sample.

(c) For the purpose of properly identifying a sample with the lot sampled, the service is entitled to examine and copy any invoice, transportation record, or other record pertaining to the lot.

Acts 1981, 67th Leg., p. 1330, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1873, ch. 349, art. 2, Sec. 7, eff. Sept. 1, 1983.

Sec. 141.104. INDEPENDENT ANALYSIS OF SAMPLE. (a) If the service finds through chemical analysis or another method that a commercial feed is in violation of a provision of this chapter, the service shall notify the manufacturer or other person who caused the feed to be distributed. The notice must be in writing and give full details of the service's findings.

(b) A person who receives a notice under this section may request that the service submit portions of the sample analyzed to other chemists for independent analysis. After receiving a request, the service shall submit two portions of the sample analyzed to two qualified chemists selected by the service. If requested, the service shall also submit one portion of the sample to the person

requesting independent analysis. A request under this subsection must be filed with the service before the 16th day following the day on which the notice is given under Subsection (a) of this section.

(c) Each of the chemists selected by the service shall analyze the portion of the sample and certify findings to the service under oath. The findings shall be prepared in duplicate and the service shall forward one copy of each chemist's findings to the person who requested the independent analysis.

(d) The three chemical analyses obtained under this section may be considered in determining whether a violation of this chapter has occurred.

(e) Except as provided by this subsection, the person requesting independent analysis shall pay the cost of the analysis. If, as a result of the independent analysis, the service determines that a violation has not occurred, the service shall pay the cost of the analysis.

Acts 1981, 67th Leg., p. 1331, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.105 and amended by Acts 1983, 68th Leg., p. 1873, ch. 349, art. 2, Sec. 7, eff. Sept. 1, 1983.

SUBCHAPTER F. ENFORCEMENT; REMEDIES

Sec. 141.121. STOP-SALE ORDER. (a) If the service has reasonable cause to believe that a commercial feed is being distributed in violation of a provision of this chapter, the service shall affix to the container of the feed a written notice containing:

(1) an order to stop the sale of the feed; and

(2) a warning to all persons not to dispose of the feed in any manner until the service or a court gives permission or until the stop-sale order expires.

(b) If the service finds that the commercial feed is in compliance with this chapter, the service shall immediately remove the stop-sale order.

(c) A stop-sale order expires at the end of the 30th day following the day on which it was affixed unless, prior to that time, the service has instituted proceedings under Section 141.122 of this code to condemn the feed.

Acts 1981, 67th Leg., p. 1331, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8,

eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 14, eff. Jan. 1, 1996.

Sec. 141.122. CONDEMNATION OF FEED. (a) If, after examination and analysis, the service finds that a commercial feed subject to a stop-sale order is in violation of a provision of this chapter, the service shall petition the district or county court in whose jurisdiction the feed is located for an order for the condemnation and confiscation of the feed. If the court determines that the feed is in violation of this chapter, the feed shall be disposed of by sale or destruction in accordance with the order of the court.

(b) If a condemned commercial feed is sold under Subsection (a) of this section, the proceeds of the sale, less court costs and charges, shall be paid into the state treasury.

(c) If the court finds that a violation of this chapter may be corrected by proper processing or labeling, the court may order that the feed be delivered to the licensee of the feed for processing or labeling under the supervision of the service. Before entering that order, the court shall:

(1) enter the decree;

(2) require that all costs, fees, and expenses be paid; and

(3) require the licensee of the feed to post good and sufficient bond conditioned on the proper labeling and processing of the feed.

(d) The licensee of the feed shall pay all costs incurred by the service in the supervision of labeling or processing under Subsection (c) of this section. The court shall return the bond to the licensee when the service notifies the court that the commercial feed is no longer in violation of this chapter and that the licensee has paid the expenses of supervision.

Acts 1981, 67th Leg., p. 1332, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 15, eff. Jan. 1, 1996.

Sec. 141.123. WARNINGS. If the service determines that a

violation of this chapter is of a minor nature and that the public interest will be served and protected by the issuance of a written warning, the service may issue the warning instead of proceeding to condemn the feed, reporting the violation for prosecution, or taking other administrative action.

Acts 1981, 67th Leg., p. 1332, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983.

Sec. 141.124. INJUNCTION. (a) The service may sue in the name of the director to enjoin a violation of this chapter.

(b) The service may request a prosecuting attorney or the attorney general to sue to enjoin a violation or threatened violation of this chapter.

Added by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983.

Sec. 141.125. SUIT TO RECOVER FEES. The service may sue to recover an inspection fee or a penalty due under Subchapter D of this chapter. Venue for a suit under this section is in Brazos County.

Acts 1981, 67th Leg., p. 1332, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Agriculture Code Sec. 141.124 and amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983.

Sec. 141.126. PROSECUTIONS. Each district attorney, criminal district attorney, or county attorney to whom the service reports a violation of this chapter shall cause appropriate proceedings to be instituted and prosecuted in the proper court without delay in the manner provided by law.

Acts 1981, 67th Leg., p. 1332, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.125 and amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983.

Sec. 141.127. VENUE FOR CIVIL AND CRIMINAL ACTIONS. Except as provided by Section 141.125 of this code, venue for a civil action or criminal prosecution under this chapter is in the county in which the commercial feed is located at the time the alleged violation is discovered by or made known to the service.

Acts 1981, 67th Leg., p. 1333, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 141.126 and amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983.

Sec. 141.128. APPEAL OF ADMINISTRATIVE ORDER OR RULING. (a) A person at interest who is aggrieved by an order or ruling of the service may appeal the order or ruling in the manner provided for contested cases by Chapter 2001, Government Code.

(b) An appeal under this section is by trial de novo.

Renumbered from Sec. 141.127 and amended by Acts 1983, 68th Leg., p. 1876, ch. 349, art. 2, Sec. 8, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER G. PENALTIES

Sec. 141.141. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1333, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983.

Sec. 141.142. DISTRIBUTION OF CUSTOMER-FORMULA FEED IN VIOLATION OF CHAPTER. (a) A person commits an offense if the person engages, conspires to engage, or causes another person to engage in the preparation, manufacture, or distribution of customer-formula feed in violation of this chapter.

(b) An offense under this section is a Class C misdemeanor

unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1333, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983.

Sec. 141.143. DISTRIBUTION OF COMMERCIAL FEED WITHOUT LICENSE, LABELING, OR PAYMENT OF INSPECTION FEE. (a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial feed:

(1) in violation of Subchapter B of this chapter;

(2) that is not labeled in accordance with Subchapter C of this chapter; or

(3) for which an inspection fee has not been paid in accordance with Subchapter D of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1333, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 16, eff. Jan. 1, 1996.

Sec. 141.144. REFUSAL OF INSPECTION OR SAMPLING. (a) A person commits an offense if the person refuses, conspires to refuse, or causes another person to refuse to permit entry, inspection, sampling, or the examination and copying of invoices or transportation records under Subchapter E of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1333, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9,

eff. Sept. 1, 1983.

Sec. 141.145. REFUSAL TO PAY INSPECTION FEE OR SUBMIT RECORDS. (a) A person commits an offense if the person refuses, conspires to refuse, or causes another person to refuse to make records available, furnish reports, permit the examination of records, or pay an inspection fee in accordance with Subchapter D of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1333, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983.

Sec. 141.146. DISPOSAL OF FEED SUBJECT TO A STOP-SALE ORDER. (a) A person commits an offense if the person disposes of feed subject to a stop-sale order in violation of Section 141.121 of this code.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1334, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983.

Sec. 141.147. DISTRIBUTION OF MISBRANDED FEED. (a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial feed that:

(1) carries a false or misleading statement on, attached to, or accompanying the container;

(2) is not labeled in accordance with Subchapter C of this chapter;

(3) has a label that is false in any particular;

(4) has a container that is made, formed, or filled in a manner that is misleading;

(5) purports to be or is represented as a commercial feed for which a definition of identity and a minimum standard have been prescribed by rule, but does not conform to the definition and standard; or

(6) makes a false or misleading statement concerning its agricultural value on the container or in any advertising matter accompanying or associated with it.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1334, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983.

Sec. 141.148. DISTRIBUTION OF ADULTERATED FEED. (a) A person commits an offense if the person distributes, conspires to distribute, or causes another person to distribute commercial feed:

(1) that is of a composition, quantity, or quality that is below or is different from that which it is represented to possess by its label;

(2) that is moldy, sour, heated, or otherwise damaged, because of which it is injurious to animals;

(3) from which an ingredient has been omitted or extracted in whole or in part;

(4) that is inferior or is damaged and the inferiority or damage has been concealed;

(5) to which a substance has been added or with which a substance has been mixed or packed so as to deceptively increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(6) that contains or bears a poisonous or deleterious substance that may render it injurious to animals under ordinary conditions of use;

(7) that contains a low-grade feeding material or filler but is not labeled in accordance with Section 141.054 of this code;

(8) that consists in whole or in part of a diseased, filthy, putrid, or decomposed substance, unless the substance has been rendered harmless by sterilization or other effective process;

(9) that is otherwise unfit for feeding to animals; or

(10) that has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under 21 U.S.C. Section 348.

(b) An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1334, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 1879, ch. 349, art. 2, Sec. 9, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 314, Sec. 17, eff. Jan. 1, 1996.

Sec. 141.149. RULES; PENALTY. (a) The service shall adopt rules that conform to but are not more strict than current good manufacturing practices as established under 21 U.S.C. Section 360b for the use of drugs in the manufacture, processing, and packaging of commercial feed unless the service determines that those practices are not appropriate to conditions existing in this state.

(b) A person commits an offense if the person violates a rule adopted under Subsection (a). An offense under this section is a Class C misdemeanor unless it is shown that the person has previously been convicted of an offense under this subchapter, in which event it is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 314, Sec. 18, eff. Jan. 1, 1996.

CHAPTER 142. ESTRAYS

Sec. 142.001. DEFINITIONS. In this chapter:

(1) "Estray" means stray livestock, stray exotic livestock, stray bison, or stray exotic fowl.

(2) "Perilous condition" means a circumstance or condition in which capture and impoundment of an estray presents an immediate threat to law enforcement personnel or to the health of the estray.

(3) "Person" does not include the government or a

governmental agency or subdivision.

(4) "Exotic livestock" means grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families but not including a mammal defined by Section 63.001, Parks and Wildlife Code, as a game animal, or by Section 71.001, Parks and Wildlife Code, as a fur-bearing animal, or any other indigenous mammal regulated by the Parks and Wildlife Department as an endangered or threatened species. The term does not include a nonindigenous mammal located on publicly owned land.

(5) "Exotic fowl" means any avian species that is not indigenous to this state. The term includes ratites but does not include a bird defined by Section 64.001, Parks and Wildlife Code, as a game bird or any other indigenous bird regulated by the Parks and Wildlife Department as an endangered or threatened species. The term does not include nonindigenous birds located on publicly owned land.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 203, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 604, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 15 (S.B. 174), Sec. 1, eff. May 10, 2013.

Sec. 142.002. RIGHTS OF OCCUPANT OTHER THAN OWNER. A person has the rights of an owner of property under this chapter if he is a part owner, a lessee, an occupant, or a caretaker of land or premises, but an owner and an occupant of the same property may not recover for the same damage.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.0021. OWNERSHIP OF EXOTIC WILDLIFE AND FOWL. A person may claim to be the owner of exotic livestock or exotic fowl under this chapter only if the animal is tagged, branded, banded, or marked in another conspicuous manner that can be read or identified from a long distance and that identifies the animal as being the property of the claimant.

Added by Acts 1993, 73rd Leg., ch. 203, Sec. 2, eff. Sept. 1, 1993.

Sec. 142.003. DISCOVERY OF ESTRAY; NOTICE. (a) If an estray, without being herded with other livestock, roams about the property of a person without that person's permission or roams about public property, the owner of the private property or the custodian of the public property, as applicable, shall, as soon as reasonably possible, report the presence of the estray to the sheriff of the county in which the estray is discovered.

(b) After receiving a report under Subsection (a) of this section that an estray has been discovered on private property, the sheriff or the sheriff's designee shall notify the owner, if known, that the estray's location has been reported.

(c) After receiving a report under Subsection (a) that an estray has been discovered on public property, the sheriff or the sheriff's designee shall notify the owner, if known, that the estray's location has been reported, except that if the sheriff or the sheriff's designee determines that the estray is dangerous to the public, the sheriff or the sheriff's designee may immediately impound the estray without notifying the owner.

(d) If the owner does not immediately remove the estray:

(1) the sheriff or the sheriff's designee may proceed with the impoundment process prescribed by Section 142.009; or

(2) if a perilous condition exists, the sheriff or the sheriff's designee may proceed with disposition of the estray under Section 142.015.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 15 (S.B. 174), Sec. 2, eff. May 10, 2013.

Sec. 142.004. REDEMPTION. (a) The owner of the estray may redeem the estray from the owner or occupant of public or private property if:

(1) the owner of the estray and the owner or occupant of the property agree to a redemption payment amount and the owner or occupant of the property receives the redemption payment from the

owner of the estray; or

(2) a justice court having jurisdiction determines the redemption payment amount and gives the owner of the estray written authority to redeem the estray under Section 142.006.

(b) If the owner of the estray does not redeem the estray not later than the fifth day after the date of notification, the sheriff or the sheriff's designee shall proceed immediately with the impoundment process prescribed by Section 142.009 unless the sheriff or the sheriff's designee determines that the owner of the estray is making a good faith effort to comply with Subsection (a). During the impoundment process period, the estray may not be used for any purpose by the owner or occupant of the property.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 1, eff. September 1, 2011.

Sec. 142.005. COLLECTION FEE. (a) If the sheriff or the sheriff's designee is present at the time of the collection of the estray, the sheriff or the sheriff's designee may require the owner of the estray to pay before the estray is removed a collection fee in an amount set by the sheriff not to exceed $25.

(b) A person who disagrees with the amount of the fee set by the sheriff under Subsection (a) of this section may petition the justice court in the manner provided by Section 142.007 of this code and may appeal the justice court decision as provided by Section 142.008 of this code.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.006. AMOUNT OF REDEMPTION PAYMENT. (a) The owner or occupant of property on which an estray is found, held, or impounded is entitled to receive from the owner of the estray the payment of a reasonable amount for maintenance and damages, if the original notice of the discovery of the estray was given to the sheriff not later than the fifth day after the date of discovery.

(b) The owner or occupant of the property may accept payment in an agreed amount from the owner of the estray.

(b-1) If the owner of the estray and the owner or occupant of the property are unable to agree to a redemption payment, either party may file a petition under Section 142.007 in the justice court having jurisdiction and have the amount of the payment determined by the justice of the peace. The justice of the peace shall determine the redemption payment amount and give the owner of the estray written authority to redeem the estray on payment of that amount to the owner or occupant of the property.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 191, Sec. 7, eff. September 1, 2011.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 7, eff. September 1, 2011.

Sec. 142.007. JUSTICE COURT PETITION. A petition seeking a justice court determination of the amount of a redemption payment or the amount of a collection fee must contain the following information:

(1) the name of the owner of the estray;

(2) a description of the estray;

(3) the number of days the estray was trespassing;

(4) the name of the owner or occupant of the property;

(5) the purpose for which the land on which the trespass occurred is used; and

(6) a statement that the estray owner and the owner or occupant of the property are unable to agree on the amount of the payment.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 3, eff. September 1, 2011.

Sec. 142.008. APPEAL OF COURT AWARD. (a) If either the owner of the estray or the owner or occupant of the public or private

property disagrees with a justice's assessment of the payment amount under Section 142.005(b) or 142.006(b-1), the amount in question shall be finally determined according to the procedure prescribed by this section.

(b) The complainant begins the appeal by filing a petition that gives the information listed in Section 142.007 of this code.

(c) The justice of the peace shall appoint three disinterested persons familiar with livestock and agriculture who reside in the county as special commissioners to determine the amount owed, if any, to the owner of the property or the sheriff, taking into account the time of the notice of discovery given by the property owner.

(d) At the request of the special commissioners for their proceedings, the justice of the peace may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt. The commissioners' decision as to the amount of any payment is final.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 4, eff. September 1, 2011.

Sec. 142.009. IMPOUNDMENT OF ESTRAY. (a) The sheriff or the sheriff's designee shall impound an estray and hold it for disposition as provided by this chapter if:

(1) the owner of the estray is unknown;

(2) the sheriff or the sheriff's designee is unable to notify the owner;

(3) the estray is dangerous to the public;

(4) the estray is located on public property and after notification is not immediately removed by the owner; or

(5) the estray is located on public or private property and is not redeemed not later than the fifth day after the date of notification, unless the sheriff or the sheriff's designee determines that the owner of the estray is making a good faith effort to comply with Section 142.004(a).

(b) After impounding an estray, the sheriff or sheriff's designee shall prepare a notice of estray stating at least:

(1) the name and address of the person who reported the

estray to the sheriff;

(2) the location of the estray when found;

(3) the location of the estray until disposition; and

(4) a description of the animal, including its breed, if known, color, sex, age, size, markings of any kind, including ear markings and brands, and other identifying characteristics.

(c) The sheriff or sheriff's designee shall file each notice of estray in the estray records in the office of the county clerk.

(d) If the owner of the estray is unknown, the sheriff or the sheriff's designee shall make a diligent search for the identity of the owner of the estray, including a search in the county register of recorded brands, if the animal has an identifiable brand. If the search does not reveal the owner, the sheriff shall post a notice of the impoundment of the estray on the public notice board of the courthouse and advertise the impoundment of the estray:

(1) in a newspaper of general circulation in the county at least twice during the 15 days after the date of impoundment; or

(2) on the county's Internet website for at least 15 days after the date of impoundment.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 75 (H.B. 2042), Sec. 1, eff. May 20, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 5, eff. September 1, 2011.

Sec. 142.010. RECOVERY OF IMPOUNDED ESTRAY BY OWNER. (a) The owner of an estray may recover possession of the estray at any time before the estray is sold under this chapter if:

(1) the owner has provided the sheriff or the sheriff's designee with an affidavit of ownership under this section;

(2) the sheriff or the sheriff's designee has approved the affidavit of ownership;

(3) the approved affidavit of ownership has been filed in the estray records of the county clerk;

(4) the owner has paid all estray handling expenses under this section;

(5) the owner has executed an affidavit of receipt of

estray under this section and delivered it to the sheriff; and

(6) the sheriff has filed the affidavit of receipt of estray in the estray records of the county clerk.

(b) An affidavit of ownership must contain at least the following information:

(1) the name and address of the owner;

(2) the date the owner discovered that the animal was an estray;

(3) the property from which the animal strayed;

(4) a description of the animal, including its breed, color, sex, age, size, markings of any kind, including ear markings and brands, and other identifying characteristics; and

(5) a sworn statement that the affiant is the owner or caretaker of the animal.

(c) The owner of the estray shall pay the expenses incurred by a person or by a sheriff, sheriff's designee, or the county in impounding, handling, seeking the owner of, or selling the estray. The sheriff is also entitled to a collection fee as provided by Section 142.005 of this code. The total amount of the payment is determined by the sheriff.

(d) A person who disagrees with the amount of the payment set by the sheriff in Subsection (c) of this section may petition the justice court in the manner provided by Section 142.007 of this code and may appeal the justice court decision as provided by Section 142.008 of this code.

(e) An affidavit of receipt of estray must contain at least the following information:

(1) the name and address of the person receiving the estray;

(2) the date of receipt of the estray;

(3) the method of claim to the estray, either previous owner or purchaser at sale;

(4) if purchased at sale, the amount of the gross purchase price of the estray;

(5) the estray handling expenses paid; and

(6) the net proceeds of any sale of the estray.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.011. USE OF ESTRAY. During the period an estray is held by the sheriff, the estray may not be used for any purpose.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.012. ESCAPE OR DEATH OF IMPOUNDED ESTRAY. If the animal dies or escapes while impounded, the sheriff shall make a written report of the death or escape and file the report with the county clerk for placement in the county estray records.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.013. DISPOSITION OR SALE OF IMPOUNDED ESTRAYS. (a) If the ownership of an estray is not determined before the third day after the date of the final advertisement under this chapter or if the estray is not redeemed before the 18th day after the date of impoundment, the county has title to the estray and the sheriff shall, except as provided by Subsection (e), cause the estray to be sold at a sheriff's sale or public auction licensed by the United States Department of Agriculture. Title to the estray is considered vested in the sheriff or the sheriff's designee for purposes of passing good title, free and clear of all claims, to the purchaser at the sale or for the purposes of Subsection (e).

(b) The sheriff shall receive the proceeds of the sale and shall allocate those proceeds in the following order of priority:

(1) payment of the expenses of sale;

(2) payment of the impoundment fee and other charges due the sheriff; and

(3) if applicable, payment of any amount for maintenance and damages due the owners of the private property from which the estray was impounded.

(c) The sheriff shall execute a report of sale of impounded livestock and file the report in the estray records of the county clerk.

(d) If there are sale proceeds remaining from the sale of an impounded estray after all expenses have been paid, the sheriff shall pay the balance to the owner, if known. If the owner is still unknown, the sheriff shall pay the balance to the county official charged with collecting and disbursing county funds, who shall

deposit any payment received to the credit of the jury fund of the county for the uses made of that fund, subject to claim by the original owner of the estray.

(e) If a sheriff determines that the sale of an estray under this section is unlikely to generate sufficient proceeds to cover the expense of the sale, the sheriff may, instead of selling the estray:

(1) donate the estray to a nonprofit organization; or

(2) retain the estray and use it for county purposes.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 1329, Sec. 1, 2, eff. Sept. 1, 1999.

Sec. 142.014. RECOVERY BY OWNER OF PROCEEDS OF SALE. Not later than the 180th day after the date of sale of an estray under this chapter, the original owner of the estray may recover the net proceeds of the sale if:

(1) the owner has provided the sheriff with an affidavit of ownership containing the information prescribed by Section 142.010(b);

(2) the sheriff has approved the affidavit;

(3) the approved affidavit has been filed in the estray records of the county clerk; and

(4) the sheriff has signed a county voucher directing the payment.

Amended by Acts 1987, 70th Leg., ch. 51, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 191 (S.B. 1357), Sec. 6, eff. September 1, 2011.

Sec. 142.015. DISPOSITION OF ESTRAY UNDER PERILOUS CONDITION. (a) A sheriff or a sheriff's designee is not required to impound an estray if a perilous condition exists.

(b) If a perilous condition exists, the sheriff or the sheriff's designee may immediately dispose of the estray by any means without notifying the owner of the estray.

(c) The sheriff shall make a written report of the disposition and file the report with the county clerk for placement in the county estray records.

Added by Acts 2013, 83rd Leg., R.S., Ch. 15 (S.B. 174), Sec. 3, eff. May 10, 2013.

CHAPTER 143. FENCES; RANGE RESTRICTIONS

SUBCHAPTER A. FENCING OF CULTIVATED LAND

Sec. 143.001. SUFFICIENT FENCE REQUIRED. Except as provided by this chapter for an area in which a local option stock law has been adopted, each gardener or farmer shall make a sufficient fence around cleared land in cultivation that is at least five feet high and will prevent hogs from passing through.

Acts 1981, 67th Leg., p. 1339, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.002. GATE. A person may not build, join, or maintain around cleared land in cultivation more than three miles lineal measure of fence running the same general direction without a gate that is at least 10 feet wide and is unlocked.

Acts 1981, 67th Leg., p. 1339, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.003. CATTLE ON COUNTY ROAD WITH CATTLE GUARD. Cattle on a county road are not considered to be running at large if the county road:

(1) separates two tracts of land under common ownership or lease; and

(2) contains a cattle guard constructed as authorized under Section 251.009, Transportation Code, that serves as part of the fencing of the two tracts.

Added by Acts 2007, 80th Leg., R.S., Ch. 339 (S.B. 66), Sec. 3, eff. September 1, 2007.

SUBCHAPTER B. LOCAL OPTION TO PREVENT CERTAIN ANIMALS FROM RUNNING AT LARGE

Sec. 143.021. PETITION FOR ELECTION. (a) In accordance with this section, the freeholders of a county or an area within a county may petition the commissioners court to conduct an election for the

purpose of determining if horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats are to be permitted to run at large in the county or area.

(b) A petition for a countywide election must be signed by at least 50 freeholders. Except as otherwise provided by Subsection (c) of this section, a petition for an election in an area within a county must be signed by at least 20 freeholders.

(c) A petition for an election in an area may be signed by a majority of the freeholders in the area if the area has fewer than 50 freeholders and is between two areas of the county that have previously adopted this subchapter or is adjacent to another area, in that county or another county, that has adopted this subchapter. If the petitioning area is adjacent to an area in another county, the freeholders shall petition the commissioners court of the county in which the petitioning area is located.

(d) The petition must:

(1) clearly state each class of animal that the petitioners seek to prohibit from running at large; and

(2) describe the boundaries of the area in which the election is to be held, if the election is to be less than countywide.

Acts 1981, 67th Leg., p. 1340, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 2.003, eff. September 1, 2009.

Sec. 143.022. ELECTION ORDERS. (a) After receiving a petition under this subchapter, the commissioners court at its next regular term shall order that an election be held throughout the county or in the petitioning area, as determined by the petition. The order shall designate a date for the election that is not less than 30 days after the date of the order.

(b) Immediately after passage of a commissioners court order for an election, the county judge shall issue an order for the election that specifies:

(1) the petition and the action of the commissioners court;

(2) each class of animal that is not to be permitted to run at large;

(3) the territorial limits of the area to be affected;
(4) the date of the election; and
(5) the location of the polls.

(c) The county judge shall give public notice of the election by publishing the order under Subsection (b) of this section in a newspaper published in the county. If no newspaper is published in the county, a copy of the order shall be posted at the courthouse door and at a public place in each justice precinct for a countywide election or at three public places in the petitioning area for an election to be held in an area of the county. Notice must be given for at least 30 days before the date of the election.

Acts 1981, 67th Leg., p. 1341, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.023. ELECTION. (a) If the election is not countywide, the county judge at the time the election order is issued shall appoint election officers for the election. In order to serve as an election officer, a person must be a freeholder of the county and a qualified voter. The election officers may appoint their own clerks.

(b) If the election is countywide, it shall be held at the usual voting places in the election precincts. If the election is not countywide, the county judge shall designate the particular places in the petitioning area at which the polls are to be open.

(c) In order to vote at an election, a person must be a freeholder and a qualified voter.

(d) Ballots for the election shall be printed to provide for voting for or against the proposition, "Letting _____ run at large," with the blank space printed with the name of each animal designated in the election order.

(e) The election officers shall make returns to the county judge of all votes cast for each proposition not later than the 10th day after the day of the election. The commissioners court shall open, tabulate, and count the returns in the manner provided for general elections in this state. The county judge shall immediately issue a proclamation declaring the result and post the proclamation at the courthouse door.

Acts 1981, 67th Leg., p. 1341, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.024. EFFECT OF ELECTION; ADOPTION OF SUBCHAPTER. (a) If a majority of the votes in an election are cast against the proposition, this subchapter is adopted and, after the 30th day following the date on which the proclamation of results is issued, a person may not permit any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held.

(b) Sections 143.028-143.034 of this code apply only in the county or area in which this subchapter has been adopted.

Acts 1981, 67th Leg., p. 1341, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.025. SUBSEQUENT ELECTIONS TO ADOPT SUBCHAPTER. (a) Except as provided by Subsection (b) of this section, if this subchapter is not adopted at an election, another election for that purpose may not be held in the county or area in which the election was held earlier than one year after the date of the election.

(b) Defeat of adoption of this subchapter at a countywide election does not prevent another election for that purpose from being held immediately thereafter for an area within the county. Defeat of adoption of this subchapter at an election held in an area within a county does not prevent a countywide election for that purpose from being held immediately thereafter.

Acts 1981, 67th Leg., p. 1342, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.026. REPEAL. (a) The freeholders of a county or an area in which this subchapter has been adopted may petition the commissioners court to conduct an election for repeal of that adoption. The petition must be signed by a majority of the freeholders who are qualified voters in the county or area subject to this subchapter.

(b) An election under this section shall be ordered and conducted, the returns shall be made, and the results shall be declared in the same manner provided by this subchapter for an election to adopt this subchapter.

(c) An election under this section may not be held earlier than two years after the date of the last election under this subchapter in the applicable county or area.

(d) If at an election under this section a majority of the votes are cast for allowing the named animals to run at large, after the expiration of 180 days after the date of the proclamation of results a person may permit an animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held. If a majority of the votes are cast against letting the named animals run at large, the operation of this subchapter in the county or area is not affected.

Acts 1981, 67th Leg., p. 1342, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.027. EXTENSION OF SUBCHAPTER TO ADJOINING AREA BY ORDER. A commissioners court by order shall extend application of this subchapter to territory that is between two areas of the county that have adopted this subchapter or is adjacent to an area, in that county or in another county, that has adopted this subchapter if:

(1) there are fewer than 20 freeholders in the territory and a majority of the owners of the land in the territory petition the court to extend application of this subchapter to that area;

(2) there are no freeholders in the territory and the owners of the land petition the commissioners court to extend application of this subchapter to that territory; or

(3) a person who owns land that is adjacent to land to which this subchapter has been extended petitions the court to extend application of this subchapter to that person's land.

Acts 1981, 67th Leg., p. 1342, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.028. FENCES. (a) A person is not required to fence against animals that are not permitted to run at large. Except as otherwise provided by this section, a fence is sufficient for purposes of this chapter if it is sufficient to keep out ordinary livestock permitted to run at large.

(b) In order to be sufficient, a fence must be at least four feet high and comply with the following requirements:

(1) a barbed wire fence must consist of three wires on posts no more than 30 feet apart, with one or more stays between every two posts;

(2) a picket fence must consist of pickets that are not

more than six inches apart;

(3) a board fence must consist of three boards not less than five inches wide and one inch thick; and

(4) a rail fence must consist of four rails.

(c) The freeholders of the county or area may petition the commissioners court for an election to determine whether three barbed wires without a board are to constitute a sufficient fence in the county or area. The election shall be conducted in the same manner and is governed by the same provisions of this subchapter provided for elections on the adoption of this subchapter.

Acts 1981, 67th Leg., p. 1342, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.033. INJURY TO TRESPASSING ANIMAL. If a person whose fence is insufficient under this subchapter maims, wounds, or kills a head of cattle or a horse, mule, jack, jennet, sheep, or goat, or procures the maiming, wounding, or killing of one of those animals, by any means, including a gun or a dog, the person is liable to the owner of the animal for damages. This section does not authorize a person to maim, wound, or kill any horse, mule, jack, jennet, sheep, goat, or head of cattle of another person.

Acts 1981, 67th Leg., p. 1345, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 958 (H.B. 1819), Sec. 1, eff. September 1, 2013.

Sec. 143.034. PENALTY. (a) A person commits an offense if the person knowingly:

(1) turns out or causes to be turned out on land that does not belong to or is not under the control of the person an animal that is prohibited from running at large under this subchapter;

(2) fails or refuses to keep up an animal that is prohibited from running at large under this subchapter;

(3) allows an animal to trespass on the land of another in an area or county in which the animal is prohibited from running at large under this subchapter; or

(4) as owner, agent, or person in control of the animal, permits an animal to run at large in an area or county in which the

animal is prohibited from running at large under this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1345, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 51, Sec. 2, eff. Sept. 1, 1987.

SUBCHAPTER C. LOCAL OPTION LIMITED FREE RANGE FOR HOGS

Sec. 143.051. PETITION FOR ELECTION. (a) The freeholders of a county or an area that has adopted Subchapter B of this chapter or the freeholders of an area that is between two areas of a county that have adopted Subchapter B of this chapter may petition the commissioners court to conduct an election for the purpose of determining whether hogs are to be permitted to run at large in the county or area for a period beginning on November 15 of each year and ending on February 15 of the following year.

(b) A petition for a countywide election must be signed by at least 50 freeholders. A petition for an election in an area of a county that has adopted Subchapter B of this chapter must be signed by at least 20 freeholders. A petition for an election in an area that is between two areas that have adopted Subchapter B of this chapter and in which there are fewer than 50 freeholders must be signed by a majority of the freeholders in the area.

(c) If the election is to be less than countywide, the petition must describe the boundaries of the area in which the election is to be held in the same manner as the description provided for the election on adoption of Subchapter B of this chapter.

Acts 1981, 67th Leg., p. 1346, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.052. ELECTION ORDERS. (a) After receiving a petition under this subchapter, the commissioners court shall order an election to be held throughout the county or in the petitioning area, as determined by the petition. The order may be entered at a regular or special meeting of the court and shall designate a date for the election that is not less than 30 days after the date of the order.

(b) Immediately after passage of a commissioners court order for an election, the county judge shall issue an order for the election that specifies:

(1) the petition and action of the commissioners court;

(2) the classes of animals that are to be allowed a limited period of free range;

(3) the period in which the animals are to have free range;

(4) the territorial limits of the area to be affected;

(5) the day of the election; and

(6) the location of the polls.

(c) The county judge shall give public notice of the election in the manner provided by Section 143.022 of this code for an election on the adoption of Subchapter B of this chapter.

Acts 1981, 67th Leg., p. 1346, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.053. ELECTION. (a) Except as provided by this section, the election shall be conducted, the returns made, and the results declared in accordance with Section 143.023 of this code and the laws regulating general elections.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition, "The limited period of free range for hogs."

Acts 1981, 67th Leg., p. 1346, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.054. EFFECT OF ELECTION. If a majority of the votes cast are for the limited period of free range for hogs, after the 10th day following the date on which the proclamation is issued a person may permit hogs to run at large in the county or area in which the election was held during the period beginning on November 15 of each year and ending on February 15 of the following year.

Acts 1981, 67th Leg., p. 1346, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.055. SUBSEQUENT ELECTIONS TO ADOPT OR REPEAL FREE RANGE. (a) Except as provided by Subsection (b) of this section, if an election is held under this subchapter another election for the purpose of adopting or repealing the limited period of free range may not be held in that county or area within two years after the date of the election.

(b) If the limited period of free range is defeated at a

countywide election, this section does not prohibit another election on the proposition from being held immediately thereafter for an area within the county. If the limited period of free range is defeated at an election in an area within a county, no other election covering that area may be held except an election in the same area, which must be held at least one year after the prior election.

(c) If at a subsequent election in a county or area that has adopted the limited period of free range the majority of votes are cast against the proposition, the limited period of free range is repealed and a person may not permit hogs to run at large in that county or area effective on the 11th day following the day on which the proclamation is issued. If the majority of the votes are cast for the proposition, the operation of the limited period of free range is not affected.

Acts 1981, 67th Leg., p. 1347, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.056. COMBINED ELECTIONS. An election under this subchapter may be held at the same time as an election under Subchapter B of this chapter, but the propositions must be submitted and voted on as separate issues and the returns and proclamations of results must be separate for each proposition.

Acts 1981, 67th Leg., p. 1347, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. LOCAL OPTION TO PREVENT CATTLE OR DOMESTIC TURKEYS FROM RUNNING AT LARGE

Sec. 143.071. PETITION FOR ELECTION. (a) In accordance with this section, the freeholders of a county or an area within a county may petition commissioners court to conduct an election for the purpose of determining if cattle are to be permitted to run at large in the county or area.

(b) The freeholders of any political subdivision of Bastrop, Blanco, Clay, Collin, DeWitt, Gonzales, Gillespie, Guadalupe, Parker, or Wise County may petition the commissioners court to conduct an election in the subdivision for the purpose of determining if domestic turkeys are to be permitted to run at large in the subdivision.

(c) A petition for a countywide election on the running at

large of cattle must be signed by at least 35 freeholders. Except as provided by Subsection (d) of this section, a petition for an election on the running at large of cattle in an area within a county must be signed by at least 15 freeholders. A petition for an election on the running at large of domestic turkeys must be signed by at least 25 freeholders.

(d) A petition for an election in an area may be signed by a majority of the freeholders in the area if the area has fewer than 50 freeholders and is between two areas of the county that have previously adopted this subchapter.

(e) A petition must:

(1) clearly state each class of animal that the petitioners seek to prohibit from running at large; and

(2) describe the boundaries of the area in which the election is to be held, if the election is to be less than countywide.

Acts 1981, 67th Leg., p. 1347, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.072. EXCEPTIONS; COUNTYWIDE ELECTIONS. The following counties may not conduct a countywide election on the running at large of cattle: Andrews, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, LaSalle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, or Yoakum.

Acts 1981, 67th Leg., p. 1348, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.073. ELECTION. (a) Except as provided by this section, the election is governed by Sections 143.022 and 143.023 of this code.

(b) The ballot shall be printed to provide for voting for or against the proposition: "Adoption of the stock law."

(c) The county judge shall open, tabulate, and count the returns in the presence of the county clerk and at least one justice of the peace of the county or in the presence of at least two respectable freeholders of the county. Following that, an order showing the results of the election shall be recorded in the minutes of the commissioners court. The order is prima facie evidence that

the requirements of this chapter have been complied with in relation to presenting the petition, ordering the election by the commissioners court, giving notice, holding the election, counting and returning votes, and declaring the results. If the result is in favor of the proposition, after the expiration of 30 days after the date of the order, the order is prima facie evidence that the proclamation required by law has been made and published.

Acts 1981, 67th Leg., p. 1348, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.074. EFFECT OF ELECTION; ADOPTION OF SUBCHAPTER. (a) If a majority of the votes cast in an election are for the proposition, this subchapter is adopted and, after the 30th day following the date on which the proclamation of results is issued, a person may not permit any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held.

(b) Sections 143.077-143.082 of this code apply only in a county or area in which this subchapter has been adopted.

Acts 1981, 67th Leg., p. 1348, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.075. SUBSEQUENT ELECTIONS TO ADOPT SUBCHAPTER. (a) Except as provided by Subsection (b) of this section, if this subchapter is not adopted at an election, no other election for that purpose may be held in the county or area in which the election was held within one year after the date of the election.

(b) If adoption of this subchapter is defeated at a countywide election, this section does not prohibit another election on the proposition from being held immediately thereafter for an area within the county. If adoption of this subchapter is defeated at an election in an area within a county, no other election covering that area may be held except an election in the same area, which must be held at least one year after the prior election.

Acts 1981, 67th Leg., p. 1348, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.076. REPEAL. (a) In accordance with this section,

the freeholders of a county or an area in which this subchapter has been adopted may petition the commissioners court to conduct an election for repeal of that adoption.

(b) A petition for a countywide election must be signed by at least 200 freeholders of the county, including 24 freeholders from each justice precinct. A petition for an election in an area within a county must be signed by at least 50 freeholders of the area.

(c) Except as provided by this section, the election is governed by the provisions of this subchapter relating to the original election.

(d) If this subchapter has been adopted for the entire county, it may not be repealed for an area within the county unless two-thirds of the votes cast at a countywide election favor repeal for that area.

Acts 1981, 67th Leg., p. 1349, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.077. FENCES. A fence is sufficient for purposes of this chapter if it is sufficient to keep out the classes of animals not affected by this subchapter.

Acts 1981, 67th Leg., p. 1349, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.082. PENALTY. (a) A person commits an offense if the person knowingly permits a head of cattle or a domestic turkey to run at large in a county or area that has adopted this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 51, Sec. 3, eff. Sept. 1, 1987.

SUBCHAPTER E. ANIMALS RUNNING AT LARGE ON HIGHWAYS

Sec. 143.101. DEFINITION. In this subchapter, "highway" means a U.S. highway or a state highway in this state, but does not include a numbered farm-to-market road. The term includes the portion of Recreation Road Number 255 that is located in Newton County between State Highway Number 87 and the boundary line with Jasper County.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 380, Sec. 1, eff. Aug. 31, 1987.

Sec. 143.102. RUNNING AT LARGE ON HIGHWAY PROHIBITED. A person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.103. IMMUNITY FROM LIABILITY. A person whose vehicle strikes, kills, injures, or damages an unattended animal running at large on a highway is not liable for damages to the animal except as a finding of:

(1) gross negligence in the operation of the vehicle; or

(2) wilful intent to strike, kill, injure, or damage the animal.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.104. HERDING OF LIVESTOCK ALONG HIGHWAY. This subchapter does not prevent the movement of livestock from one location to another by herding, leading, or driving the livestock on, along, or across a highway.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.106. ENFORCEMENT. Each state highway patrolman or county or local law enforcement officer shall enforce this subchapter and may enforce it without the use of a written warrant.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.107. CONFLICT WITH OTHER LAW. This subchapter prevails to the extent of any conflict with another provision of this

chapter.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.108. PENALTY. (a) A person commits an offense if the person violates Section 143.102 of this code.

(b) An offense under this section is a Class C misdemeanor.

(c) A person commits a separate offense for each day that an animal is permitted to roam at large in violation of Section 143.102 of this code.

Acts 1981, 67th Leg., p. 1350, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 51, Sec. 4, eff. Sept. 1, 1987.

SUBCHAPTER F. REMOVAL OF ADJOINING FENCES

Sec. 143.121. PROHIBITION. Except as provided by this subchapter or by mutual consent of the parties, a person may not remove a fence that is:

(1) a separating or dividing fence in which the person is a joint owner; or

(2) attached to a fence owned or controlled by another person.

Acts 1981, 67th Leg., p. 1351, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.122. REMOVAL OF FENCE BY OWNER. A person who owns an interest in a fence attached to a fence owned in whole or in part by another person is entitled to withdraw his or her fence from the other fence after giving six months' notice of the intended separation. The notice must be in writing and given to the owner of the attached fence or to that person's agent, attorney, or lessee.

Acts 1981, 67th Leg., p. 1351, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 143.123. REQUIRING REMOVAL OF FENCE BY ANOTHER PERSON. A person who is the owner of a fence that is wholly on that person's land may require the owner of an attached fence to disconnect and

withdraw the attached fence by giving six months' notice of the required disconnection. The notice must be in writing and given to the owner of the attached fence or that person's agent, attorney, or lessee.

Acts 1981, 67th Leg., p. 1351, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 144. MARKS AND BRANDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 144.001. OWNER'S MARKS AND BRANDS. (a) Each person who has cattle, hogs, sheep, or goats shall have and may use one or more earmarks, brands, tattoos, or electronic devices differing from the earmarks, brands, tattoos, and electronic devices of the person's neighbors.

(b) A person who owns a horse may have and use one or more of the following to identify the horse:

(1) a brand differing from the brand of the person's neighbors, including a fire or electric heat brand, freeze brand, acid brand, or hoof brand;

(2) an earmark differing from the earmark of the person's neighbors;

(3) a tattoo differing from the tattoo of the person's neighbors;

(4) an electronic device; or

(5) another generally accepted identification method.

Acts 1981, 67th Leg., p. 1353, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 780, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 368, Sec. 1, eff. Sept. 1, 2003.

Sec. 144.002. BRANDS OF MINORS. A minor who owns cattle, hogs, or one or more horses may have one or more marks or brands, but the parent or guardian of the minor is responsible for the proper use of the mark or brand.

Acts 1981, 67th Leg., p. 1353, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 780, Sec. 3, eff. Sept. 1, 1997.

Sec. 144.003. AGE FOR MARKING OR BRANDING. (a) Cattle shall be marked with the earmark or branded with the brand of the owner on or before the date they are one year old.

(b) Hogs, sheep, and goats shall be marked with the earmark of the owner on or before the date they are six months old.

Acts 1981, 67th Leg., p. 1353, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. RECORDING OF MARKS AND BRANDS

Sec. 144.041. MARKS AND BRANDS TO BE RECORDED. (a) Each person who owns cattle, hogs, sheep, or goats shall record that person's earmarks, brands, tattoos, and electronic devices with the county clerk of the county in which the animals are located.

(b) A person who owns a horse shall record an identification mark authorized by Section 144.001(b) with the county clerk of the county in which the animal is located.

(c) The county clerk shall keep a record of the marks and brands of each person who applies to the clerk for that purpose.

(d) A person may record that person's marks and brands in as many counties as necessary.

(e) A person may record any mark or brand that the person desires to use if no other person has recorded the mark or brand, without regard to whether that person has previously recorded a mark or brand.

(f) Not later than the 30th day after the date a county clerk receives a record relating to cattle or horses under this section, the clerk shall forward a copy of the record to the association authorized to inspect livestock under 7 U.S.C. Section 217a.

(g) The recording of marks and brands at a point of sale for use by an association authorized to inspect livestock under 7 U.S.C. Section 217a does not serve as a record under this chapter. An association authorized to inspect livestock under 7 U.S.C. Section 217a has no duty to verify ownership at a point of sale.

(h) A county clerk may accept electronic filing or rerecording of an earmark, brand, tattoo, electronic device, or other type of mark for which a recording is required under this chapter or other law.

Acts 1981, 67th Leg., p. 1358, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 780, Sec. 4, eff. Sept. 1, 1997;

Acts 2003, 78th Leg., ch. 368, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.21, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 304 (H.B. 2108), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 1, eff. June 17, 2011.

Sec. 144.042. RECORDING. In recording a mark, electronic device, tattoo, or brand, the county clerk shall note the date on which the mark, electronic device, tattoo, or brand is recorded. In addition, the person recording a mark, electronic device, tattoo, or brand shall designate the part of the animal on which the mark, electronic device, tattoo, or brand is to be placed and the clerk shall include that in the records.

Acts 1981, 67th Leg., p. 1359, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2003, 78th Leg., ch. 368, Sec. 3, eff. Sept. 1, 2003.

Sec. 144.043. EFFECT OF RECORDING. (a) Any dispute about an earmark or brand shall be decided by reference to the mark and brand records of the county clerk, and the mark or brand of the oldest date prevails.

(b) A recorded mark or brand is the property of the person causing the record to be made and is subject to sale, assignment, transfer, devise, and descent the same as other personal property.

Acts 1981, 67th Leg., p. 1359, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 144.044. RERECORDING. (a) Not later than six months after August 30 of 1981 and of every 10th year thereafter, each person who owns livestock mentioned in this chapter shall have that person's marks and brands recorded with the county clerk, regardless of whether or not the marks or brands have been previously recorded.

(b) The person who, according to the records of the county, first recorded the mark or brand in the county is entitled to have the mark or brand recorded in that person's name. If the records do

not show who first recorded the mark or brand in the county, the person who has been using the mark or brand the longest is entitled to have it recorded in that person's name.

(c) After the expiration of six months from each recording under this section, the marks and brands recorded prior to recording under this section have no force and effect and only the records made after each recording under this section may be examined or considered in recording marks and brands in the county.

(d) Not later than the 30th day after the date a county clerk receives a record relating to cattle or horses under this section, the clerk shall forward a copy of the record to the association authorized to inspect livestock under 7 U.S.C. Section 217a.

Acts 1981, 67th Leg., p. 1359, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2003, 78th Leg., ch. 368, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER F. PENALTIES

Sec. 144.121. USE OF UNRECORDED MARK OR BRAND. (a) A person commits an offense if the person marks or brands any unmarked or unbranded livestock with a mark or brand that is not recorded under this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $500.

Acts 1981, 67th Leg., p. 1362, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 144.122. ALTERING MARK OR BRAND. (a) A person commits an offense if the person alters or changes a mark or brand on livestock owned or controlled by that person without first having changed the recorded mark or brand.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $500.

Acts 1981, 67th Leg., p. 1362, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 144.124. IMPROPERLY RECORDING BRAND. (a) A person commits an offense if, as county clerk, the person records a brand for which the person recording the brand fails to designate the part

of the animal on which the brand is to be placed.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $50.

Acts 1981, 67th Leg., p. 1362, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 144.125. COUNTERBRANDING WITHOUT OWNER'S CONSENT. (a) A person commits an offense if the person violates Section 144.074(c) of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $50 for each animal counterbranded.

Acts 1981, 67th Leg., p. 1362, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 144.127. REPRODUCTION OR DESTRUCTION OF TATTOO MARK. (a) A person commits an offense if the person, without the consent of the owner, reproduces, counterfeits, copies, adds to, takes from, imitates, destroys, or removes a registered tattoo mark on livestock or aids in the commission of one of those acts.

(b) An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for not less than 2 years nor more than 12 years.

Acts 1981, 67th Leg., p. 1362, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.001, eff. September 1, 2009.

Sec. 144.128. PURCHASE, SALE, OR TRANSPORTATION OF TATTOOED LIVESTOCK WITHOUT CONSENT. (a) A person commits an offense if the person:

(1) without consent of the owner, buys, sells, or barters, for that person or another person, any livestock on which a registered tattoo mark has been placed;

(2) without consent of the owner, transports over the highways of this state any livestock on which a registered tattoo mark has been placed; or

(3) aids in the commission of an act under Subdivision (1) or (2) of this subsection.

(b) An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for not less than 2 years nor more than 12 years.

Acts 1981, 67th Leg., p. 1363, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.002, eff. September 1, 2009.

CHAPTER 146. SALE AND SHIPMENT OF LIVESTOCK

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 146.001. BILL OF SALE OR TRANSFER REQUIRED. (a) If a person in this state sells or transfers a horse, mule, jack, jennet, ox, or head of cattle, the actual delivery of the animal must be accompanied by a written transfer to the purchaser from the vendor. The written transfer must give the marks and brands of the animal and, if more than one animal is transferred, must give the number transferred.

(b) On the trial of the right of property in an animal sold or transferred under Subsection (a) of this section, the possession of the animal without the written transfer is presumed to be illegal.

(c) A person may dispose of livestock on the range by sale and delivery of the marks and brands, but in order to acquire title the purchaser must have the bill of sale recorded in the county clerk's office. The county clerk shall record the transfer in records maintained for that purpose and shall note the transfer on the records of marks and brands in the name of the purchaser.

Acts 1981, 67th Leg., p. 1365, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 146.003. REGISTER OF SHIPPED CATTLE. (a) The commander or agent of a vessel or the agent of a railroad on which cattle are exported from this state shall keep a register of all cattle shipped, showing:

(1) the marks, brands, and a general description of the animals;

(2) the name of the person shipping the animals;

(3) the date of shipment; and

(4) the county from which the cattle were driven.

(b) On the first day of each month, the commander or agent shall deposit the register with the county clerk of the county from which the cattle were shipped. The clerk shall copy the register into records maintained for that purpose and return it to the party recording the information.

Acts 1981, 67th Leg., p. 1366, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 146.005. PERMITS TO TRANSPORT ANIMALS. (a) A person who drives a vehicle, including a truck or an automobile, containing livestock, domestic fowl, slaughtered livestock or domestic fowl, or butchered portions of livestock or domestic fowl on a highway, public street, or thoroughfare or on property owned or leased by a person other than the driver shall obtain a permit authorizing the movement.

(b) A permit must be signed by the owner or caretaker of the shipment or by the owner or person in control of the land from which the driver began movement. In addition, the permit must state the following information:

(1) the point of origin of the shipment, including the name of the ranch or other place;

(2) the point of destination of the shipment, including the name of the ranch, market center, packinghouse, or other place;

(3) the number of living animals, slaughtered animals, or butchered portions; and

(4) the description of the shipment, including the kind, breed, color, and marks and brands of living or slaughtered animals.

(c) On demand of a peace officer or any other person, the driver shall exhibit the permit required by this section or shall provide a signed, written statement containing all of the information required for a permit under this section.

(d) Failure or refusal of a driver to exhibit a permit or provide a statement in accordance with this section is probable cause for a search of the vehicle to determine if it contains stolen property and for detaining the shipment a reasonable length of time to make that determination.

Acts 1981, 67th Leg., p. 1366, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 146.006. PENALTY FOR DRIVING STOCK TO MARKET WITHOUT BILL OF SALE OR SWORN LIST. (a) A person commits an offense if the person drives to market animals of a class listed in Section 146.001 of this code without possessing:

(1) a bill of sale or transfer for each animal that shows the marks and brands of the animal and is certified as recorded by the county clerk of the county from which the animals were driven; or

(2) if the person raised the animals, a list of the marks and brands that is certified as recorded by the county clerk of the county from which the animals were driven.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $2,000.

Acts 1981, 67th Leg., p. 1367, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 146.008. PENALTY FOR TRANSPORTING ANIMALS WITHOUT PERMIT OR WITH FRAUDULENT PERMIT. (a) A person commits an offense if, under Section 146.005 of this code, the person:

(1) transports living animals, slaughtered animals, or butchered portions of animals without possessing a permit;

(2) fails to exhibit a permit or provide a statement on demand;

(3) transports living animals, slaughtered animals, or butchered portions of animals that are not covered by a permit;

(4) possesses a false or forged permit; or

(5) provides a false written statement.

(b) An offense under Subsection (a)(1) or (a)(2) of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200 for each animal in the shipment.

(c) An offense under Subsection (a)(3) of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200 for each animal that is not covered by the permit.

(d) An offense under Subsection (a)(4) or (a)(5) of this section is a misdemeanor punishable by:

(1) a fine of not less than $200 nor more than $500;

(2) confinement in county jail for not less than 60 days nor more than 6 months; or

(3) both fine and confinement under this subsection.

Acts 1981, 67th Leg., p. 1367, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. EXPORT-IMPORT PROCESSING FACILITIES

Sec. 146.021. DEPARTMENT FACILITIES. The department may receive and hold for processing animals and animal products transported in international trade and may establish and collect reasonable fees for yardage, maintenance, feed, medical care, facility use, and other necessary expenses incurred in the course of processing those animals. Notwithstanding any other law, the department may use any portion of fees collected under this section that remains after spending the proceeds of the fees to meet other necessary expenses incurred under this section for expenses related to maintenance of or repairs to department facilities.

Acts 1981, 67th Leg., p. 1367, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 4(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 369, Sec. 9, eff. Sept. 1, 2003.

Sec. 146.022. CONTRACTS. (a) The department may execute agreements with corporations or other private concerns to provide feed, medical care, or other necessary goods and services in connection with the processing of animals that are to be exported or imported.

(b) The department shall enter into any cooperative agreement initiated by the Texas Animal Health Commission under Section 161.053.

Acts 1981, 67th Leg., p. 1368, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 1, eff. Sept. 1, 1995.

Sec. 146.023. PAYMENT OF FEES AND DEBTS. The department shall collect fees or debts owed to the state or to a supplier of goods or services in connection with the processing of exported or imported animals prior to the removal of the animals from the department's facilities.

Acts 1981, 67th Leg., p. 1368, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 146.024. ABANDONED ANIMALS. (a) In order to satisfy unpaid fees and debts to the state and private suppliers, the department may sell at public auction an animal that the owner leaves in the processing facilities for more than 30 days.

(b) The proceeds of a sale under this section shall be used first to satisfy the fees owed to the department and then to satisfy the fees and debts owed to private suppliers. Any balance of the proceeds shall be paid to the owner of the animal, as determined by the manifest or shipping order accompanying the animal.

Acts 1981, 67th Leg., p. 1368, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 146.025. CARE AND TREATMENT OF ANIMALS IN FACILITIES. (a) The department shall exercise reasonable care in the handling and movement of animals in the processing facilities of the department.

(b) The department is not responsible for death or injury suffered by an animal as a result of the negligence or criminal conduct of a private supplier or a person who is not an authorized employee of the department.

Acts 1981, 67th Leg., p. 1368, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 147. LIVESTOCK COMMISSION MERCHANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.001. DEFINITIONS. In this chapter:

(1) "Commission merchant" means a livestock commission merchant or a livestock auction commission merchant.

(2) Repealed by Acts 2003, 78th Leg., ch. 604, Sec. 5.

Acts 1981, 67th Leg., p. 1378, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78th Leg., ch. 604, Sec. 5, eff. Sept. 1, 2003.

Sec. 147.002. COMMISSION MERCHANTS. (a) A person is subject to this chapter as a livestock commission merchant if the person:

(1) pursues the business of selling livestock on consignment for a commission or other charges;

(2) solicits consignment of livestock as a livestock commission merchant; or

(3) advertises or holds himself or herself out to be a livestock commission merchant.

(b) A person is subject to this chapter as a livestock auction commission merchant if the person:

(1) pursues the business of selling livestock at auction on consignment for a commission or other charges;

(2) solicits consignment of livestock as a livestock auction commission merchant; or

(3) advertises or holds himself or herself out to be a livestock auction commission merchant.

Acts 1981, 67th Leg., p. 1378, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.003. EXCEPTIONS. (a) A person pursuing the business of selling mules, horses, jacks, or jennets in a county with a population of not less than 1.8 million nor more than 1.9 million is not subject to this chapter as a livestock auction commission merchant.

(b) Sections 147.004, 147.022(a)(3), 147.022(b), 147.023, 147.024, and 147.041(a) do not apply to a livestock auction commission or company that is subject to and regulated by the United States Department of Agriculture under the Packers and Stock Yards Act (7 U.S.C. Sec. 181 et seq.).

Acts 1981, 67th Leg., p. 1378, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 55, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 1, eff. September 1, 2011.

Sec. 147.004. REMITTANCE OF SALE PROCEEDS. (a) Within 48 hours after the sale of consigned livestock, a commission merchant shall:

(1) remit the net proceeds of the sale to each person entitled to receive those proceeds or to another person to whom the person directs that the proceeds be paid; or

(2) if requested by a person, deposit the proceeds due that person to the credit of that person in a state or national bank in

the city or county of the commission merchant's principal place of business.

(b) In calculating the time allowed for remittance of proceeds under this section by a livestock commission merchant, Sundays, holidays, and the day of sale are excluded. In calculating the time allowed for remittance of proceeds under this section by a livestock auction commission merchant, Sundays, holidays, and the day of sale are included.

Acts 1981, 67th Leg., p. 1379, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.005. DEPOSIT OF PROCEEDS IN DISPUTE. (a) If the proceeds of a sale of livestock by a commission merchant become involved in a dispute between contending claimants, or if the commission merchant is notified that a person other than the person who consigned the livestock asserts a right to the proceeds, the commission merchant shall deposit the net proceeds of the sale in a state or national bank in the city or county of the commission merchant's principal place of business.

(b) The commission merchant shall promptly notify all interested parties of the deposit of proceeds in a bank under Subsection (a) of this section.

(c) Following the deposit of the proceeds and the giving of notice under this section, neither the commission merchant nor the bond of the commission merchant is liable for those funds.

Acts 1981, 67th Leg., p. 1379, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. BOND

Sec. 147.021. BOND REQUIRED. Before engaging in business as a commission merchant, a person shall file a bond with the county judge of the county of the commission merchant's principal place of business.

Acts 1981, 67th Leg., p. 1379, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.022. TERMS AND CONDITIONS OF BOND. (a) Each bond filed under this chapter must be:

(1) signed by a solvent surety company authorized to do business in this state and having a paid-up capital of at least $500,000;

(2) payable to the county judge of the county of the commission merchant's principal office or place of business as trustee for all persons who may be entitled to recover under the bond; and

(3) conditioned that the commission merchant will comply with the requirements of this chapter and will well and truly perform all agreements entered into with a consignor or owner of livestock, or with a person holding a lien on livestock, in relation to receiving, handling, and selling the livestock and remitting the net proceeds of a sale.

(b) Each bond must contain a provision requiring that, in order to terminate a bond, the terminating party must give at least 10 days' written notice to the county judge prior to the termination.

Acts 1981, 67th Leg., p. 1379, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.023. AMOUNT OF BOND. (a) Except as otherwise provided by this section, the amount of each commission merchant's bond must be equal to the nearest multiple of $1,000 that is more than twice the average amount of the commission merchant's sales and purchases of livestock on a business day during the preceding year or portion of a year in which the person engaged in business as a commission merchant. The average amount of sales and purchases for one day is determined by dividing the total sales and purchases for the preceding year by 308, regardless of the actual number of business days.

(b) A bond may not be in an amount less than $2,000.

(c) If the amount equal to twice the average sales and purchases of a commission merchant on a business day exceeds $50,000, the bond must be in an amount equal to $50,000 plus 10 percent of the amount of sales and purchases in excess of $50,000.

(d) If prior to filing bond a person has no previous sales and purchases on which to determine the amount of the bond, the bond must be in an amount adequate to cover the probable volume of business to be done by that person, as determined by the county judge of the county of the commission merchant's principal place of business.

After that person has engaged in business as a commission merchant for one year, the amount of the bond shall be determined as otherwise provided by this section.

(e) If in the judgment of the county judge the condition of the business of a livestock commission merchant renders the bond inadequate, the county judge shall notify the livestock commission merchant and the commission merchant shall increase the bond to an amount determined adequate by the county judge.

Acts 1981, 67th Leg., p. 1380, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.024. MORE THAN ONE PERSON UNDER SINGLE BOND. (a) If two or more commission merchants are employees or agents solely for one person, they may be covered by a single bond in an amount determined under Section 147.023 of this code on the basis of combined purchases and sales.

(b) Two or more commission merchants not subject to Subsection (a) of this section may be covered under a single bond in an amount not less than the aggregate amount of individual bonds required under Section 147.023 of this code.

Acts 1981, 67th Leg., p. 1380, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.025. APPROVAL OF BOND BY COUNTY JUDGE. (a) The county judge shall carefully examine each commission merchant's bond and shall approve a bond if satisfied that it conforms to the requirements of this subchapter.

(b) Before approving the bond of a livestock commission merchant, the county judge shall obtain certified data relating to the surety company from the commissioner of insurance.

Acts 1981, 67th Leg., p. 1380, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.026. RECORDING OF BOND AND STATEMENT OF SALES. (a) The county judge shall file each commission merchant's bond with the county clerk, who shall record the bond at length in records maintained for that purpose labeled "Bonds of Livestock Commission Merchants" or "Bonds of Livestock Auction Commission Merchants," as

applicable. The records must be properly indexed.

(b) If the person filing the bond is a livestock commission merchant, the person shall also file a sworn statement with the county judge setting forth the average daily sales of the person for the preceding year. The county clerk shall record the statement in the same manner as the bond.

(c) The county clerk shall file the original bond and sworn statement of a livestock commission merchant in the clerk's office.

Acts 1981, 67th Leg., p. 1381, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 23, eff. Sept. 1, 1989.

Sec. 147.027. COMMISSION MERCHANT'S COPY OF BOND. As soon as practicable after the recording of a bond, a commission merchant shall request, and the county clerk shall provide, a certified copy of the bond. The commission merchant shall post that copy in a conspicuous place in the main office of the commission merchant's principal place of business.

Acts 1981, 67th Leg., p. 1381, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.028. SUIT ON BOND. (a) Any person damaged by breach of a condition of a bond may bring suit and recover under the bond. The suit shall be brought in the county in which the bond is filed.

(b) A bond is not void on first recovery and may be sued on until the total amount is exhausted. If a bond is reduced by one-half, the commission merchant shall file a new bond, conditioned as provided by this subchapter for the original bond, in an amount necessary to restore the bond to the amount required by Section 147.023 of this code.

Acts 1981, 67th Leg., p. 1381, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.029. INSOLVENCY OF SURETY. If the county judge discovers that the surety on a bond is insolvent or determines that the surety is financially unable to make the bond sufficient, the county judge shall notify the commission merchant and the commission

merchant shall execute a new bond in accordance with the requirements for the original bond.

Acts 1981, 67th Leg., p. 1381, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. RECORDS

Sec. 147.041. RECORD OF SALES. (a) Each livestock auction commission merchant shall keep a record of all livestock sold at auction. The record must give an accurate description of the livestock, including:

(1) the color;

(2) the probable age;

(3) any marks and brands; and

(4) the location of marks and brands.

(b) Records maintained under Subsection (a) of this section are subject to inspection by any citizen of this state.

(c) Each livestock auction commission merchant shall file a quarterly report of all livestock sold with the commissioners court of the county in which the commission merchant transacts business. The report must include:

(1) a description of the livestock;

(2) the name and address of the consignor or the person purporting to own the livestock; and

(3) the name and address of the purchaser.

Acts 1981, 67th Leg., p. 1381, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.042. RECORD OF TRANSPORTATION. (a) Each livestock auction commission merchant shall keep a record of the motor vehicle and trailer or semitrailer on which livestock is transported to the place of sale. The record must be in a form prescribed by the Texas Animal Health Commission and must show the name of the owner of the livestock, the name of the owner of the vehicle, and the name, make, and license plate number of the vehicle. The commission merchant shall prepare the record and make it available for public inspection within 24 hours after receipt of the livestock.

(b) Each livestock auction commission merchant shall keep a record of the motor vehicle and trailer or semitrailer on which livestock is transported from the place of sale. The record must be

in a form prescribed by the Texas Animal Health Commission and must show the name and address of the purchaser of the livestock and the name and address of the owner of the vehicle. The commission merchant shall prepare the record and make it available immediately after the livestock is sold and before the livestock is removed from the place of sale.

(c) The livestock auction commission merchant shall furnish a copy of the record under Subsection (b) of this section to the driver of the vehicle transporting the livestock from the place of sale. The driver shall keep that record in the driver's possession while transporting the livestock and shall exhibit the record on demand of any peace officer.

(d) Each livestock auction commission merchant shall retain records kept under this section for at least one year after the date of sale. The commission merchant shall keep the records open for public inspection at reasonable hours.

(e) This section does not apply to a private sale in which the livestock of only one person is offered for sale.

Acts 1981, 67th Leg., p. 1382, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. PENALTIES

Sec. 147.061. FAILURE TO FILE OR MAINTAIN BOND. (a) A person commits an offense if the person:

(1) advertises or solicits business, or engages in business, as a livestock commission merchant without filing a bond in accordance with this chapter; or

(2) as a livestock commission merchant, fails to maintain a bond in full force and effect in accordance with this chapter.

(b) A person commits an offense if the person:

(1) advertises or solicits business, or engages in business, as a livestock auction commission merchant without filing a bond in accordance with this chapter; or

(2) as a livestock auction commission merchant, fails to maintain a bond in full force and effect in accordance with this chapter.

(c) An offense under Subsection (a) is a felony punishable by:

(1) a fine of not less than $500 nor more than $5,000;

(2) imprisonment in the Texas Department of Criminal

Justice for not less than one nor more than two years; or

(3) both fine and imprisonment under this subsection.

(d) An offense under Subsection (b) of this section is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $1,000;

(2) confinement in county jail for not more than 30 days; or

(3) both fine and confinement under this subsection.

Acts 1981, 67th Leg., p. 1382, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.003, eff. September 1, 2009.

Sec. 147.062. FAILURE TO POST COPY OF BOND. (a) A person commits an offense if the person fails to post a copy of the person's bond in accordance with Section 147.027 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100.

(c) A person commits a separate offense each day that the copy is not posted.

Acts 1981, 67th Leg., p. 1383, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 147.063. FAILURE TO REMIT PROCEEDS OF SALE. (a) A person commits an offense if, as a livestock commission merchant, the person intentionally fails and refuses to remit the net proceeds of a sale of livestock in accordance with Section 147.004 of this code.

(b) A person commits an offense if, as a livestock auction commission merchant, the person intentionally fails and refuses to remit the net proceeds of a sale of livestock in accordance with Section 147.004 of this code.

(c) An offense under Subsection (a) of this section is a misdemeanor punishable by:

(1) a fine of not less than $100 nor more than $1,000;

(2) confinement in county jail for not less than 1 month nor more than 12 months; or

(3) both fine and confinement under this subsection.

(d) An offense under Subsection (b) of this section is a

misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $100;

(2) confinement in county jail for not more than 30 days; or

(3) both fine and confinement under this subsection.

Acts 1981, 67th Leg., p. 1383, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 995, ch. 235, art. 1, Sec. 5, eff. Sept. 1, 1983.

Sec. 147.064. APPROPRIATION OF PROCEEDS OF SALE. (a) A person commits an offense if, as a livestock commission merchant, the person appropriates or uses any portion of the net proceeds of the sale of livestock for a purpose other than remitting the proceeds under Section 147.004 of this code.

(b) A person commits an offense if, as a livestock auction commission merchant, the person appropriates or uses any portion of the net proceeds of the sale of livestock for a purpose other than remitting the proceeds under Section 147.004 of this code.

(c) An offense under Subsection (a) is a felony punishable by imprisonment in the Texas Department of Criminal Justice for not less than two years nor more than four years.

(d) An offense under Subsection (b) of this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000; and

(2) confinement in county jail for not more than one year.

Acts 1981, 67th Leg., p. 1383, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.004, eff. September 1, 2009.

Sec. 147.065. FAILURE TO KEEP OR EXHIBIT TRANSPORTATION RECORDS. (a) A person commits an offense if the person violates Section 147.042 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $200.

Acts 1981, 67th Leg., p. 1384, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 148. SLAUGHTERING OF LIVESTOCK

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 148.001. DEFINITION. In this chapter, "slaughterer" means a person engaged in the business of:

(1) slaughtering livestock for profit; or

(2) selling livestock, as a primary business, to be slaughtered by the purchaser on premises owned or operated by the seller, in a county:

(A) with a population of one million or more;

(B) that contains two or more municipalities with a population of 250,000 or more;

(C) that is adjacent to a county described by Paragraph (B); or

(D) that is adjacent to a county described by Paragraph (C) and:

(i) has a population of not more than 50,000 and contains a municipality with a population of at least 20,000; or

(ii) contains, wholly or partly, two or more municipalities with a population of 250,000 or more.

Acts 1981, 67th Leg., p. 1385, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1993, 73rd Leg., ch. 308, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 681 (H.B. 92), Sec. 1, eff. September 1, 2011.

Sec. 148.002. SLAUGHTERER TO REGISTER. (a) Before engaging in business as a slaughterer, a person must register with the county clerk, giving the person's name and intent to engage in business as a slaughterer.

(b) This section does not apply to a person who slaughters at least 300 head of cattle a day.

Acts 1981, 67th Leg., p. 1385, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.003. SLAUGHTER OF UNBRANDED OR UNMARKED LIVESTOCK; SLAUGHTER WITHOUT BILL OF SALE. (a) A slaughterer may not purchase

or slaughter for market livestock that is unmarked or unbranded.

(b) A slaughterer may not purchase and slaughter any animal without receiving a bill of sale or written transfer from the person selling the livestock.

(c) This section does not apply to the slaughter of an animal raised by the slaughterer.

Acts 1981, 67th Leg., p. 1385, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. RECORDS AND REPORTS

Sec. 148.011. RECORD OF PURCHASE AND SLAUGHTER. (a) In accordance with this section, a slaughterer shall keep a record of all livestock purchased or slaughtered. Both the slaughterer and the person managing the slaughtering operations are responsible for maintaining records under this section. A person who owns or operates a locker plant and leases, rents, or furnishes space to others in that plant for profit shall keep records in accordance with this section as if that person were a slaughterer.

(b) Each slaughterer shall record in a bound volume:

(1) a description of the livestock by kind, color, sex, probable age, any marks and brands, and the location of any marks and brands;

(2) the name and address of the person from whom the livestock was purchased or acquired or for whom the livestock was slaughtered;

(3) if the livestock is delivered to the slaughterer by someone other than the slaughterer or the slaughterer's agent, the name and address of the individual delivering the livestock and the make, model, and license plate number of the vehicle in which the livestock was delivered; and

(4) the date of delivery of the livestock to the slaughterer.

(c) The record must be prepared and made available to the Texas Animal Health Commission and for public inspection within 24 hours after the slaughterer receives the livestock. The slaughterer shall preserve the record for at least two years and shall keep the record open for public inspection at all reasonable hours.

(d) The Texas Animal Health Commission shall disseminate the provisions of this section and Section 148.063 of this code to

interested persons. The commission shall carry out occasional spot checks of places maintained by slaughterers in order to determine if the provisions of this section are complied with.

Acts 1981, 67th Leg., p. 1385, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 780, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 604, Sec. 3, eff. Sept. 1, 2003.

Sec. 148.012. REPORTS TO COUNTY. (a) At each regular meeting of the county commissioners court, each slaughterer shall make a sworn report relating to the animals slaughtered since the last regular meeting of the court. The report must provide:

(1) the number of animals slaughtered;

(2) the color, age, sex, and marks and brands of each animal slaughtered;

(3) a bill of sale or written conveyance for each animal purchased for slaughter; and

(4) a notation of any slaughtered animals that were raised by the slaughterer.

(b) The slaughterer shall file the report required by Subsection (a) of this section with the county clerk.

(c) In addition to the report made under Subsection (a), a slaughterer of cattle or horses shall file with the county clerk a record showing:

(1) the marks, brands, and general description of the cattle or horses;

(2) the names of the persons from whom the cattle or horses were purchased;

(3) the date of purchase; and

(4) the county from which the cattle or horses were driven.

(d) The slaughterer shall file the record required by Subsection (c) on the first day of each month with the county clerk of the county where the cattle or horses were slaughtered. The clerk shall copy the report into records maintained for that purpose and return the original to the person recording the information.

Acts 1981, 67th Leg., p. 1386, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 24, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 780, Sec. 8, eff. Sept. 1, 1997.

SUBCHAPTER C. PAYMENT FOR LIVESTOCK PURCHASED FOR SLAUGHTER

Sec. 148.021. MEAT PROCESSOR. A person is a meat processor subject to this subchapter if the person is engaged in the business of slaughtering cattle, sheep, goats, or hogs and processing or packaging them for sale as meat.

Acts 1981, 67th Leg., p. 1387, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.022. TIME AND METHOD OF PAYMENT FOR PURCHASES. (a) Except as otherwise provided by this section or by agreement, a meat processor, or any other person, who purchases cattle, sheep, goats, or hogs for slaughter shall make payment for the livestock by:

(1) cash or check for the purchase price actually delivered to the seller or the seller's representative at the location where the purchaser takes physical possession of the livestock and on the day of the transaction; or

(2) wire transfer of funds on the business day on which possession of the livestock is transferred.

(b) If transfer of possession of the livestock is accomplished after normal banking hours, the purchaser shall make payment no later than the close of the first business day following the transfer of possession.

(c) If the livestock is purchased on the basis of grade and yield, the purchaser shall make payment by wire transfer of funds no later than the close of the first business day following determination of the grade and yield.

Acts 1981, 67th Leg., p. 1387, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.023. AGREEMENT ON TIME AND METHOD OF PAYMENT. (a) The purchaser and seller of cattle, sheep, goats, or hogs, or other expressly authorized agents, may agree in writing on a method of payment other than that provided by Section 148.022 of this code.

(b) An agreement under this section must state that it may be canceled at any time by either party, after which payment must be made in accordance with Section 148.022 of this code.

(c) An agreement may not alter any other requirement of this

subchapter.

Acts 1981, 67th Leg., p. 1387, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.024. DELAY IN COLLECTION OF PAYMENT INSTRUMENTS. An instrument issued in payment for livestock under this subchapter shall be drawn on banks that are so located as not to artificially delay collection of funds through mail or otherwise cause an undue lapse of time in the clearance process.

Acts 1981, 67th Leg., p. 1387, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.025. DAMAGES. A purchaser who fails to pay for livestock as provided by this subchapter or who artificially delays the collection of funds for the payment is liable to the seller of the livestock for the purchase price and:

(1) damages in an amount equal to 12 percent of the purchase price;

(2) interest on the purchase price at the highest legal rate from the transfer of possession until payment is made in accordance with this subchapter; and

(3) a reasonable attorney's fee for the prosecution of collection of the payment.

Acts 1981, 67th Leg., p. 1387, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.026. LIEN. (a) To secure all or part of the sales price, a person who sells cattle, sheep, goats, or hogs for slaughter has a lien on each animal sold and on the carcass of the animal, products from the animal, and proceeds from the sale of the animal, its carcass, or its products.

(b) A lien under this section is attached and perfected on delivery of the livestock to the purchaser without further action. The lien continues as to the animal, its carcass, its products, and the proceeds of any sale without regard to possession by the party entitled to the lien.

Acts 1981, 67th Leg., p. 1388, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.027. COMMINGLING OF LIVESTOCK UNDER LIEN. (a) If an animal, its carcass, or its products is under a lien and is commingled with other livestock, carcasses, or products so that the identity is lost, the lien extends to all of the commingled animals, carcasses, or products as if the lien had been perfected originally in all of them.

(b) Each lien extended under this section is on a parity with any other lien extended under this section.

(c) A lien extended under this section is not enforceable against a person without actual knowledge of the lien who purchases one or more of the carcasses or products in the ordinary course of trade or business from the party who commingled the carcasses or products, nor against a subsequent transferee from that purchaser, but is enforceable against the proceeds of that sale.

Acts 1981, 67th Leg., p. 1388, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.028. PRIORITY OF LIEN. A lien under this subchapter has priority over any other lien or perfected security interest in the animal, its carcass, its products, or proceeds from the sale of the animal, its carcass, or its products.

Acts 1981, 67th Leg., p. 1388, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.029. FEE FOR HORSES SOLD TO SLAUGHTERER. (a) A slaughterer shall pay the following fees for each horse purchased for slaughter:

(1) $2 to the Texas Agricultural Extension Service; and

(2) $3 to the department, agency, or association authorized and designated by the secretary of agriculture of the United States to inspect livestock in Texas under 7 U.S.C. Section 217a.

(b) The slaughterer shall remit the fees required by Subsection (a) on a weekly basis.

Added by Acts 1997, 75th Leg., ch. 780, Sec. 9, eff. Sept. 1, 1997.

Sec. 148.030. INSPECTION OF HORSES SOLD THROUGH CERTAIN SLAUGHTERHOUSES. The department, agency, or association authorized to inspect livestock under 7 U.S.C. Section 217a shall inspect for identification purposes each horse held, handled, purchased, or sold through a slaughterhouse.

Added by Acts 1997, 75th Leg., ch. 780, Sec. 9, eff. Sept. 1, 1997.

SUBCHAPTER D. PROVISIONS APPLICABLE ONLY TO CERTAIN COUNTIES

Sec. 148.041. APPLICATION OF SUBCHAPTER. This subchapter does not apply to the following counties: Anderson, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colorado, Comal, Comanche, Dallas, Delta, Denton, DeWitt, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, Hunt, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimble, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Palo, Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Sutton, Tarrant, Titus, Travis, Trinity, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, and Wood.

Acts 1981, 67th Leg., p. 1388, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.042. SLAUGHTERER'S BOND. (a) Before engaging in business as a slaughterer of cattle, a person must file a bond with the clerk of the county court of the county in which the person is to conduct business. The bond is subject to approval by the county judge and must be:

(1) in an amount not less than $200 nor more than $1,000;

(2) payable to the State of Texas; and

(3) conditioned that the slaughterer will comply with the requirements of this subchapter.

(b) A district or county attorney of the county in which the bond is filed may sue on the bond of a slaughterer who violates a provision of this subchapter. Any sum recovered by suit on the bond shall be deposited in the county treasury to the credit of the

available school fund.

Acts 1981, 67th Leg., p. 1388, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.043. RECORDS. (a) A slaughterer of cattle shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered, including:

(1) a description of each animal, including marks, brands, age, color, and weight;

(2) the name of the person from whom the cattle were purchased; and

(3) the date of each purchase.

(b) A slaughterer shall keep records under this section open for public inspection at reasonable hours.

Acts 1981, 67th Leg., p. 1389, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.045. PURCHASE OF SLAUGHTERED CATTLE WITHOUT HIDE OR EARS. A slaughterer may not purchase cattle that have been slaughtered by another person if:

(1) the slaughtered animal is not accompanied by the hide and ears; or

(2) the ear mark or brand on the hide accompanying a slaughtered animal has been changed, mutilated, or destroyed.

Acts 1981, 67th Leg., p. 1389, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. PENALTIES

Sec. 148.061. FAILURE TO REGISTER. (a) A person required by Section 148.002 of this code to register as a slaughterer commits an offense if the person fails to register.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $5 nor more than $25.

Acts 1981, 67th Leg., p. 1390, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.062. SLAUGHTER OF UNBRANDED OR UNMARKED LIVESTOCK;

SLAUGHTER WITHOUT BILL OF SALE. (a) A person commits an offense if the person slaughters unbranded or unmarked livestock, or purchases or slaughters an animal without receiving a bill of sale or written transfer, in violation of Section 148.003 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $300.

Acts 1981, 67th Leg., p. 1390, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.063. FAILURE TO KEEP OR PROVIDE RECORDS OF PURCHASE OR SLAUGHTER. (a) A person required to keep records of purchase or slaughter by Section 148.011 of this code commits an offense if the person violates that section.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $200.

Acts 1981, 67th Leg., p. 1390, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.064. FAILURE TO REPORT TO COUNTY. (a) A person required by Section 148.012(a) of this code to file reports on slaughtered animals with the county commits an offense if the person fails to file a report as required by that section.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $300.

Acts 1981, 67th Leg., p. 1390, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.065. FAILURE TO FILE BOND. (a) A person required by Section 148.042 of this code to file a bond commits an offense if the person engages in business as a slaughterer without filing bond in accordance with that section.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $5 nor more than $200.

Acts 1981, 67th Leg., p. 1390, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.066. FAILURE TO KEEP OR PERMIT INSPECTION OF RECORDS.

(a) A person required by Section 148.043 of this code to keep records commits an offense if the person:

(1) fails to keep records as required by that section; or

(2) refuses to permit inspection of those records at reasonable hours.

(b) An offense under Subsection (a)(1) of this section is a misdemeanor punishable by a fine of not less than $20 nor more than $200.

(c) An offense under Subsection (a)(2) of this section is a misdemeanor punishable by a fine of not more than $25.

Acts 1981, 67th Leg., p. 1390, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 148.069. PURCHASE OF SLAUGHTERED CATTLE WITHOUT HIDE OR EARS. (a) A person commits an offense if the person purchases slaughtered cattle in violation of Section 148.045 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $200.

Acts 1981, 67th Leg., p. 1391, ch. 388, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 149. SALE OF HORSEMEAT FOR HUMAN CONSUMPTION

Sec. 149.001. DEFINITION. In this chapter, "horsemeat" means the flesh of an animal of the genus equus.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26, 1991.

Sec. 149.002. SALE OR POSSESSION OF HORSEMEAT. A person commits an offense if:

(1) the person sells, offers for sale, or exhibits for sale horsemeat as food for human consumption; or

(2) the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26, 1991.

Sec. 149.003. TRANSFER OF HORSEMEAT. A person commits an offense if the person:

(1) transfers horsemeat to a person who intends to sell the horsemeat, offer or exhibit it for sale, or possess it for sale as food for human consumption; and

(2) knows or in the exercise of reasonable discretion should know that the person receiving the horsemeat intends to sell the horsemeat, offer or exhibit it for sale, or possess it for sale as food for human consumption.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26, 1991.

Sec. 149.004. PRIMA FACIE EVIDENCE OF OFFENSE. In a prosecution under this chapter, any of the following is prima facie evidence of an offense:

(1) the presence of horsemeat in a retail store in which the meat of cattle, sheep, goats, or hogs is exhibited or kept for sale, unless the horsemeat is in a package or container of not more than five pounds and is plainly labeled "horsemeat";

(2) the presence of horsemeat in the wholesaler's establishment, warehouse, meat locker, meat cooler, or other place of storage or handling of the meat of cattle, sheep, goats, or hogs, unless the horsemeat is in a package or container of not more than five pounds and is plainly labeled "horsemeat";

(3) the presence of horsemeat mixed or commingled with the meat of cattle, sheep, goats, or hogs in hamburger, sausage, or other processed meat products;

(4) the transportation of horsemeat between the hours of 10 p.m. and 4 a.m., unless the horsemeat is in individual packages or containers of not more than five pounds and is plainly labeled "horsemeat";

(5) the presence of horsemeat in or the delivery or attempted delivery of horsemeat to a restaurant or cafe; and

(6) the presence of horsemeat in or the delivery or attempted delivery of horsemeat to an establishment that prepares, cans, or processes food products for human consumption from the meat of cattle, sheep, goats, or hogs.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26,

1991.

Sec. 149.005. PENALTY. (a) An offense under this chapter is punishable by:

(1) a fine of not more than $1,000;

(2) confinement in jail for not less than 30 days nor more than two years; or

(3) both the fine and confinement.

(b) A second or subsequent offense under this chapter is punishable by imprisonment in the Texas Department of Criminal Justice for not less than two years nor more than five years.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.005, eff. September 1, 2009.

Sec. 149.006. INJUNCTION. On a conviction of an offense under this chapter, the court shall enjoin the defendant from slaughtering animals, selling meat, transporting meat, or in any manner purveying meat to the public as food for human consumption. Each day the injunction is violated constitutes a separate contempt.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26, 1991.

Sec. 149.007. EFFECT ON MUNICIPAL ORDINANCES. (a) Except as provided by Subsection (b) of this section, this chapter does not affect any provision of a municipal ordinance regulating the sale or possession of horsemeat or the licensing of horsemeat dealers.

(b) A municipal ordinance that directly conflicts with this chapter has no effect.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.01(a), eff. Aug. 26, 1991.

CHAPTER 150. IMPORTED MEAT

SUBCHAPTER A. SALE OF IMPORTED FRESH MEAT

Sec. 150.001. DEFINITIONS. In this subchapter:

(1) "Fresh meat" means a quarter, half, or whole carcass of beef, pork, or mutton or a cut or other part of the carcass that has not been canned, cooked, or otherwise processed.

(2) "Ground meat" includes fresh meat subsequently ground or commingled.

(3) "Imported fresh meat" means fresh meat imported from a foreign nation. The term includes ground meat any part of which is fresh meat imported from a foreign nation.

(4) "Person" means an individual, firm, partnership, association, or corporation.

(5) "Retail store" means a grocery store, butcher shop, delicatessen, or other place where fresh meat is sold at retail for consumption off premises.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.02(a), eff. Aug. 26, 1991.

Sec. 150.002. LABELING OF IMPORTED FRESH MEAT. (a) A person may not knowingly sell at wholesale or at a retail store any imported fresh meat unless the person complies with the requirements prescribed by this section.

(b) The requirements of Subsections (c) and (d) of this section apply only to imported fresh meat offered for sale at wholesale or at a retail store.

(c) A label or brand shall be placed on each quarter, half, or whole carcass of imported fresh meat and on each individually wrapped or packaged cut or other part of imported fresh meat.

(d) A label or sign shall be placed on each tray or case in which unwrapped or unpackaged cuts or slices of imported fresh meat are displayed for selection by a patron and on each tray or other container in which imported fresh meat, including hamburger, ground meat, or sausage, is displayed in bulk.

(e) The label, brand, or sign must contain the words "Product of _____" (nation of origin of the imported fresh meat) or other words clearly indicating the nation of origin. The label or sign for imported fresh meat described by Subsection (d) must be

conspicuous and legible.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.02(a), eff. Aug. 26, 1991.

Sec. 150.003. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 150.002 of this code.

(b) A first offense under this section is punishable by a fine of not less than $25 nor more than $200. A subsequent offense under this section is punishable by a fine of not less than $100 nor more than $500, confinement in the county jail for not less than 30 days nor more than 90 days, or both.

(c) The Texas Department of Health shall enforce Section 150.002 of this code and shall file a sworn complaint against any person who violates that section.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.02(a), eff. Aug. 26, 1991.

SUBCHAPTER B. PURCHASE OF IMPORTED BEEF BY STATE AGENCIES AND POLITICAL SUBDIVISIONS

Sec. 150.011. DEFINITIONS. In this subchapter:

(1) "Political subdivision" means a county or municipality or a school, junior college, water, hospital, reclamation, or other special-purpose district.

(2) "State agency" means an agency, department, board, or commission of the state or a state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.02(a), eff. Aug. 26, 1991.

Sec. 150.012. PURCHASE OF IMPORTED BEEF BY STATE AGENCY OR POLITICAL SUBDIVISION. (a) A state agency or political subdivision may not purchase beef or a product consisting substantially of beef that has been imported from outside the United States.

(b) The Texas Department of Health shall enforce this section

and shall receive reports of violations of this section.

(c) The Texas Board of Health shall adopt rules for the reporting of purchases covered by this section by state agencies and political subdivisions and for the reporting of violations of this section.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 2.02(a), eff. Aug. 26, 1991.

CHAPTER 151. SALE OF BISON AND BUFFALO PRODUCTS

Sec. 151.001. DEFINITIONS. (a) In this chapter:

(1) "Bison" means:

(A) an animal known by the scientific name Bovidae bison bison, commonly known as the North American prairie bison; or

(B) an animal known by the scientific name Bovidae bison athabascae, commonly known as the Canadian woods bison.

(2) "Bison meat" means the meat or flesh of a bison.

(3) "Buffalo" means:

(A) an animal known by the scientific name Bovidae bubalus bubalis, commonly known as the Asian Indian buffalo, water buffalo, or caraboa;

(B) an animal known by the scientific name Bovidae syncerus caffer, commonly known as the African buffalo or Cape buffalo;

(C) an animal known by the scientific name Bovidae anoa depressicornis, commonly known as the Celebes buffalo; or

(D) an animal known by the scientific name Bovidae anoa mindorenis, commonly known as the Philippine buffalo or Mindoro buffalo.

(4) "Buffalo meat" means the meat or flesh of a buffalo.

(5) "Restaurant" means a public eating place where food is sold.

(6) "Retail store" means a retail food store as defined under Section 437.001, Health and Safety Code, butcher shop, delicatessen, or other place where fresh or cooked meat is sold at retail for consumption off premises.

(b) For the purposes of:

(1) Subdivision (1), Subsection (a), the term "bison" does not include a hybrid of an animal listed in that subdivision; and

(2) Subdivision (3), Subsection (a), the term "buffalo" does not include a hybrid of an animal listed in that subdivision.

Added by Acts 1997, 75th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1997.

Sec. 151.002. LABELING OF BISON AND BUFFALO MEAT. (a) A person may not knowingly sell at wholesale, at a retail store, or in a restaurant any bison or buffalo meat except in compliance with this section.

(b) The requirements of Subsections (c) and (d) apply only to bison or buffalo meat offered for sale at wholesale or at a retail store.

(c) A label or brand shall be placed on each quarter, half, or whole carcass of bison or buffalo meat and on each individually wrapped or packaged cut or other part of bison or buffalo meat.

(d) A label or sign shall be placed on each tray or case in which unwrapped or unpackaged cuts or slices of bison or buffalo meat are displayed for selection by a patron and on each tray or other container in which bison or buffalo meat is displayed in bulk.

(e) The label, brand, or sign must contain the words "bison meat," "North American bison meat," or "Native American bison meat," if the meat is bison meat. The label, brand, or sign must contain the words "water buffalo meat" or "Asian buffalo meat" if the meat is buffalo meat.

(f) The label or sign for bison or buffalo meat required by Subsection (d) must be conspicuous and legible.

(g) A person may not label or represent a product that contains the meat, fat, or by-product of a species of animal other than bison or buffalo as being buffalo meat or bison meat.

Added by Acts 1997, 75th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1997.

Sec. 151.003. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 151.002(a).

(b) A first offense under this section is a Class C misdemeanor. A subsequent offense under this section is a Class B misdemeanor.

(c) The Texas Department of Health shall enforce Section 151.002 and shall file a criminal complaint against any person who

violates Section 151.002(a).

Added by Acts 1997, 75th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 152. PREVENTION AND INVESTIGATION OF HORSE THEFT

Sec. 152.001. TRAINING PROGRAM FOR HORSE OWNERS. (a) The Texas Agricultural Extension Service shall develop an ongoing training program for horse owners to promote the prevention of horse theft. The program must include information on visible, permanent identification of horses and other security measures to prevent horse theft.

(b) A county office of the Texas Agricultural Extension Service periodically shall notify horse owners of the training program through public service announcements or other means.

Added by Acts 1997, 75th Leg., ch. 780, Sec. 1, eff. Sept. 1, 1997. Renumbered from Agriculture Code Sec. 151.001 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(1), eff. Sept. 1, 1999.

Sec. 152.002. TRAINING PROGRAM FOR LAW ENFORCEMENT AGENCIES. (a) A state, county, or local law enforcement agency with responsibility for investigating horse thefts shall provide training for its employees likely to handle horse theft cases regarding:

(1) state laws on horse theft;

(2) resources available for investigating horse thefts;

(3) communication about horse theft with other law enforcement agencies; and

(4) identification of missing horses.

(b) To facilitate greater communication between law enforcement agencies in horse theft cases, state, county, and local law enforcement agencies shall, to the greatest extent possible, use the Texas Crime Information Center (TCIC) and the National Crime Information Center (NCIC) in reporting and investigating horse thefts.

Added by Acts 1997, 75th Leg., ch. 780, Sec. 1, eff. Sept. 1, 1997. Renumbered from Agriculture Code Sec. 151.002 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(1), eff. Sept. 1, 1999.

SUBTITLE C. CONTROL OF ANIMAL DISEASES AND PESTS
CHAPTER 161. GENERAL DISEASE AND PEST CONTROL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. (a) In this chapter:

(1) "Animal" includes livestock, exotic livestock, domestic fowl, and exotic fowl.

(2) "Commission" means the Texas Animal Health Commission.

(3) Repealed by Acts 2003, 78th Leg., ch. 604, Sec. 5.

(4) "Exotic livestock" means grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(5) "Exotic fowl" means any avian species that is not indigenous to this state. The term includes ratites.

(b) References in Subchapter A, C, D, E, or H of this chapter to "livestock," "domestic animals," "domestic fowl," or other specifically named animals shall be construed to include all or part of the carcasses of those animals.

Acts 1981, 67th Leg., p. 1393, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 637, Sec. 6, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 836, Sec. 2, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 35, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 203, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 554, Sec. 2, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 604, Sec. 5, eff. Sept. 1, 2003.

Sec. 161.002. CARETAKER OF ANIMAL. (a) A person is subject to this chapter as the caretaker of an animal and is presumed to control the animal if the person:

(1) is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or

(2) exercises care or control over the animal.

(b) This section does not limit the care and control of an animal to any person.

Acts 1981, 67th Leg., p. 1393, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.003. DUTY OF COUNTY COMMISSIONERS COURT. (a) The commissioners court of each county shall cooperate with and assist the commission in protecting livestock, domestic animals, and domestic fowl from communicable diseases, regardless of whether a particular disease exists in the county.

(b) Each commissioners court may employ a veterinarian at the expense of the county. Any veterinarian employed is subject to approval by the commission.

Acts 1981, 67th Leg., p. 1393, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.004. DISPOSAL OF DISEASED LIVESTOCK CARCASS. (a) A person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl that die from a disease listed in Section 161.041, or who owns or controls the land on which the livestock, exotic livestock, domestic fowl, or exotic fowl die or on which the carcasses are found, shall dispose of the carcasses in the manner required by the commission under this section.

(b) The Texas Commission on Environmental Quality may not adopt a rule related to the disposal of livestock under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

(c) The commission shall:

(1) determine the most effective methods of disposing of diseased carcasses, including methods other than burning or burial; and

(2) by rule prescribe the method or methods that a person may use to dispose of a carcass as required by Subsection (a).

(d) The commission by rule may delegate its authority under this section to the executive director.

Acts 1981, 67th Leg., p. 1394, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2003, 78th Leg., ch. 1333, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 1, eff. January 1, 2008.

Sec. 161.005. COMMISSION WRITTEN INSTRUMENTS. (a) The

commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

(b) Any written instrument issued by the commission is admissible as evidence in court if certified by the presiding officer or the executive director.

Acts 1981, 67th Leg., p. 1394, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 24, ch. 3, Sec. 17, eff. June 27, 1983; Acts 1995, 74th Leg., ch. 554, Sec. 3, eff. Sept. 1, 1995.

Sec. 161.006. DOCUMENTS TO ACCOMPANY SHIPMENT. (a) If this chapter requires that a certificate or permit accompany animals or commodities moved in this state, the document must be:

(1) in the possession of the conductor of a train and attached to the waybill of the shipment, if the movement is by rail; or

(2) in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

(b) This section does not apply to a certificate provided for by Section 161.088 of this code.

Acts 1981, 67th Leg., p. 1394, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.007. EXPOSURE OR INFECTION CONSIDERED CONTINUING. If a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission.

Acts 1981, 67th Leg., p. 1394, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.008. STATE FUNDS REFORM ACT APPLICABLE. All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 4, eff. Sept. 1, 1995.

SUBCHAPTER B. TEXAS ANIMAL HEALTH COMMISSION

Sec. 161.021. COMPOSITION. (a) The commission is composed of 13 commissioners appointed by the governor with the advice and consent of the senate, with the appropriate number from each of the following categories:

(1) a practitioner of veterinary medicine;

(2) a dairyman;

(3) a cattle raiser;

(4) a hog raiser;

(5) a sheep or goat raiser;

(6) a poultry raiser;

(7) an individual involved in the equine industry;

(8) an individual involved in the feedlot industry;

(9) an individual involved in the livestock marketing industry;

(10) three members of the general public; and

(11) an individual involved in the exotic livestock or exotic fowl industry.

(b) In making appointments to the commission, the governor, to the extent practicable, shall give proportionate representation to the northern, eastern, southern, and western portions of the state.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization

regulated by or receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Acts 1981, 67th Leg., p. 1394, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 14, ch. 3, Sec. 1, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 699, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 554, Sec. 5, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1170, Sec. 2.01, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 2, eff. September 1, 2007.

Sec. 161.022. TERM. Commissioners serve for staggered terms of six years, with the terms of four or five members expiring every other year.

Acts 1981, 67th Leg., p. 1395, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 699, Sec. 2, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1170, Sec. 2.02, eff. Sept. 1, 2003.

Sec. 161.023. MANDATORY TRAINING PROGRAM FOR COMMISSIONERS. (a) Before a member of the commission may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for the office.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 6, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 3, eff. September 1, 2007.

Sec. 161.024. PRESIDING OFFICER. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Acts 1981, 67th Leg., p. 1395, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 554, Sec. 7, eff. Sept. 1, 1995.

Sec. 161.025. VACANCIES. The governor shall fill vacancies by appointment for the unexpired term.

Acts 1981, 67th Leg., p. 1395, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.026. EXPENSES AND PER DIEM. Each commissioner is entitled to reasonable travel expenses incurred in performing official duties and to the per diem set in the General Appropriations Act for members of state boards and commissions.

Acts 1981, 67th Leg., p. 1395, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 4, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.027. SUNSET PROVISION. The Texas Animal Health Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2021.

Acts 1981, 67th Leg., p. 1395, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 188, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 729, Sec. 9, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 836, Sec. 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 2.02, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 554, Sec. 8, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 5.01, eff. June 17, 2011.

Sec. 161.028. RESTRICTIONS ON COMMISSION APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. The term does not include an association formed to benefit or promote a particular breed of livestock, exotic livestock, domestic fowl, or exotic fowl.

(b) A person may not be a member of the commission and may not be a commission employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of livestock production, exotic livestock production, domestic fowl production, or exotic fowl

production; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of livestock production, exotic livestock production, domestic fowl production, or exotic fowl production.

(c) A person may not serve as a member of the commission or act as the general counsel to the commission or the agency if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 6, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 6, eff. September 1, 2007.

Sec. 161.029. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 161.021;

(2) does not maintain during service on the commission the qualifications required by Section 161.021;

(3) is ineligible for membership under Section 161.028;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless that absence is excused by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive

director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1989, 71st Leg., ch. 386, Sec. 7, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 554, Sec. 9, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 7, eff. September 1, 2007.

Sec. 161.030. SEPARATION OF AUTHORITY. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 8, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 554, Sec. 10, eff. Sept. 1, 1995.

Sec. 161.0305. EXECUTIVE DIRECTOR; QUALIFICATIONS. The executive director must hold a degree in veterinary medicine.

Added by Acts 1999, 76th Leg., ch. 665, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.031. PERSONNEL. (a) The executive director or the executive director's designee shall develop an intraagency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program shall require intraagency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this subsection.

(c) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for

office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated annually and reviewed by the Texas Commission on Human Rights for compliance with Subsection (d)(1) of this section, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 9, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 11, eff. Sept. 1, 1995.

Sec. 161.0311. ACCEPTANCE OF GIFTS AND GRANTS. (a) The commission may solicit and accept gifts, grants, and donations for the purposes of this chapter.

(b) The commission shall report to the legislature by December

31 of each year the source and amount of each gift, grant, and donation received under this section.

Added by Acts 2001, 77th Leg., ch. 410, Sec. 1, eff. May 28, 2001.

Sec. 161.033. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the parties to a complaint of the status of the complaint until its final disposition.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 11, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 554, Sec. 13, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 8, eff. September 1, 2007.

Sec. 161.0335. TECHNOLOGY POLICY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 10, eff. September 1, 2007.

Sec. 161.0336. INFORMATION RELATING TO COMPLAINT PROCEDURES. The commission shall:

(1) post information about its complaint procedures on the home page of the Internet website maintained by the commission;

(2) post specific information on how to file a complaint, what types of information to provide with the complaint, and a

description of the complaint process; and

(3) explain on that website what types of complaints the commission has authority to resolve, distinguishing those from complaints that the commission does not have authority to resolve.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 10, eff. September 1, 2007.

Sec. 161.034. PUBLIC MEETINGS. (a) The commission is subject to the open meetings law, Chapter 551, Government Code.

(b) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(c) Each meeting of the commission must be held in a location that provides adequate access to members of the public.

(d) The commission shall post audio archives of its meetings on the commission's Internet website.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 12, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 554, Sec. 14, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 9(a), eff. September 1, 2007.

Sec. 161.035. ADVISORY COMMITTEES. (a) The commission may establish advisory committees as it considers necessary to assist it in developing proposed rules for the regulation of exotic livestock and exotic fowl.

(b) A member of an advisory committee established under this section serves at the pleasure of the commission.

(c) A member of an advisory committee established under this section is not entitled to compensation.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 15, eff. Sept. 1, 1995.

Sec. 161.036. PROGRAM AND FACILITY ACCESSIBILITY. The

commission shall comply with federal and state laws related to program and facility accessibility. The executive director shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 15, eff. Sept. 1, 1995.

Sec. 161.037. PERIODIC REVIEW OF AGENCY FUNCTIONS. (a) The commission shall periodically review services provided by the commission, including laboratory services, that also are provided in the private sector in order to determine the most cost-effective method for delivering the services.

(b) The commission shall consult the Council on Competitive Government for assistance during each review performed under this section.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 15, eff. Sept. 1, 1995.

Sec. 161.038. ADMINISTRATIVE PROCEDURE ACT APPLICABLE. The commission is subject to the administrative procedure law, Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 15, eff. Sept. 1, 1995.

Sec. 161.039. COMPLIANCE POLICY AND INTERNAL OPERATING PROCEDURES. (a) The commission by rule shall adopt agencywide compliance policies and internal operating procedures and convey those policies and procedures to all officers and employees of the commission.

(b) The commission by rule shall adopt clearly defined and uniform procedures addressing compliance with this chapter and commission rules. The compliance procedures shall include the commission's process for:

(1) receiving and consistently responding to complaints from the public and officers and employees of the commission;

(2) checking for previous violations whenever a complaint is filed;

(3) involving a supervisor in the approval of key compliance decisions; and

(4) regularly updating complainants on the status of their complaints.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 10, eff. September 1, 2007.

Sec. 161.040. RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 10, eff. September 1, 2007.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 161.041. DISEASE CONTROL. (a) The commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from the following:

(1) tuberculosis;

(2) anthrax;

(3) glanders;

(4) infectious abortion;

(5) hemorrhagic septicemia;

(6) hog cholera;

(7) Malta fever;

(8) foot-and-mouth disease;

(9) rabies among animals other than canines;

(10) bacillary white diarrhea among fowl;

(11) equine infectious anemia; and

(12) other diseases recognized as communicable by the veterinary profession.

(b) The commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the commission. The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

(c) A person commits an offense if the person knowingly fails to handle, in accordance with rules adopted by the commission, livestock, exotic livestock, domestic fowl, or exotic fowl:

(1) infected with a disease listed in Subsection (a);

(2) exposed, as defined by commission rule, to a disease listed in Subsection (a) if the commission has notified the person that the animal was exposed to the disease; or

(3) subject to a testing requirement due to a risk of exposure, as defined by commission rule, to a specific disease if the commission has notified the person of the testing requirement.

(d) A person commits an offense if the person knowingly fails to identify or refuses to permit an agent of the commission to identify, in accordance with rules adopted by the commission, livestock, exotic livestock, domestic fowl, or exotic fowl infected with a disease listed in Subsection (a).

(e) An offense under Subsection (c) or (d) of this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(f) In complying with this section, the commission may not infringe on or supersede the authority of any other agency of this state, including the authority of the Parks and Wildlife Department

relating to wildlife. If a conflict of authority occurs, the commission shall assume responsibility for disease control efforts, but work collaboratively with the other agency to enable each agency to effectively carry out its responsibilities.

(g) The commission's authority to control or eradicate an agent of transmission that is an animal species that is not subject to the jurisdiction of the commission is limited to instances when a disease that threatens livestock, exotic livestock, domestic fowl, or exotic fowl has been confirmed or is suspected to exist in that species and the commission determines that a serious threat to livestock, exotic livestock, domestic fowl, or exotic fowl exists.

Acts 1981, 67th Leg., p. 1395, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 13, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 35, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 11, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 77 (S.B. 970), Sec. 1, eff. September 1, 2015.

Sec. 161.0411. DOMESTIC AND EXOTIC FOWL REGISTRATION. (a) A seller, distributor, or transporter of live domestic or exotic fowl in this state shall register with the commission under this section. The commission may exempt from registration a person participating in a disease surveillance program recognized by the commission.

(b) A person may apply for a certificate of registration or a renewal of a certificate of registration under this section by submitting an application and an annual fee prescribed by the commission. A person must complete an application for a certificate of registration that includes a list of each location at which the person conducts the sale, distribution, or transportation of domestic or exotic fowl.

(c) The commission shall adopt rules to administer this section, including rules relating to the testing, identification, transportation, inspection, sanitation, and disinfection of domestic and exotic fowl.

(d) The commission shall prescribe and collect an annual fee

for registration as a seller, distributor, or transporter of domestic or exotic fowl in this state.

(e) The commission may set fees under this section in amounts that do not exceed the amounts necessary to enable the commission to recover the costs of administering this section.

(f) A person commits an offense if the person knowingly violates this section or fails to comply with an order or rule adopted under this section.

(g) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1109, Sec. 1, eff. June 20, 2003.

Sec. 161.0412. REGULATION AND REGISTRATION OF FERAL SWINE HOLDING FACILITIES. (a) The commission may, for disease control purposes, require the registration of feral swine holding facilities.

(b) To prevent the spread of disease, the commission may require a person to register with the commission if the person confines feral swine in a holding facility for slaughter, sale, exhibition, hunting, or any other purpose specified by commission rule.

(c) Rules adopted under this section shall include registration requirements, provisions for the issuance, revocation, and renewal of a registration, disease testing, inspections, recordkeeping, construction standards, location limitations, and provisions relating to the treatment of swine in and movement of swine to or from a feral swine holding facility.

(d) Rules authorized by this section may be adopted only for disease-control purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 12, eff. September 1, 2007.

Sec. 161.0415. DISPOSAL OF DISEASED OR EXPOSED LIVESTOCK OR FOWL. (a) The commission by order may require the slaughter of livestock, domestic fowl, or exotic fowl, under the direction of the commission, or the sale of livestock, domestic fowl, or exotic fowl

for immediate slaughter at a public slaughtering establishment maintaining federal or state inspection if the livestock, domestic fowl, or exotic fowl is exposed to or infected with a disease other than bluetongue or vesicular stomatitis that:

(1) is recognized by the United States Department of Agriculture as a foreign animal disease;

(2) is the subject of a cooperative eradication program with the United States Department of Agriculture;

(3) is named on "List A" of the Office International Des Epizooties; or

(4) is the subject of a state of emergency, as declared by the governor.

(b) The commission by order may require the slaughter and disposal of livestock, domestic fowl, or exotic fowl exposed to or infected with a disease not listed in Subsection (a) if the commission determines that action to be necessary for the protection of animal health in this state. The commission shall immediately deliver a copy of an order issued under this subsection to the appropriate legislative oversight committees.

(c) A person may appeal an order of the commission under this section as provided by Chapter 2001, Government Code.

(d) The Texas Commission on Environmental Quality may not adopt a rule related to the disposal of livestock under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

Added by Acts 1999, 76th Leg., ch. 764, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1333, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 149 (H.B. 1521), Sec. 1, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 149 (H.B. 1521), Sec. 2, eff. May 24, 2013.

Sec. 161.0416. EMERGENCY MANAGEMENT. (a) The commission may prepare and plan for, respond to, and aid in the recovery from disaster events that may affect livestock, exotic livestock, domestic fowl, or exotic fowl, including disease outbreaks, hurricanes,

floods, tornadoes, wildfires, and acts of terrorism.

(b) The commission may assist with local emergency management planning. This subsection may not be construed to affect the commission's responsibility under any other law, including Chapter 418, Government Code, or any responsibility delegated to the commission by an emergency management authority of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 12, eff. September 1, 2007.

Sec. 161.0417. AUTHORIZED PERSONNEL FOR DISEASE CONTROL. (a) A person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals.

(b) The commission shall adopt rules for the authorization of a person described by Subsection (a).

(c) The commission may, after reasonable notice, suspend or revoke a person's authorization under Subsection (a) if the commission determines that the person has substantially failed to comply with this chapter or rules adopted under this chapter.

(d) A person is entitled to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the person's authorization under Subsection (a). The commission shall make all final decisions to suspend or revoke an authorization.

(e) This section does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1090 (H.B. 3569), Sec. 1, eff. September 1, 2013.

Sec. 161.042. SALE AND DISTRIBUTION OF VETERINARY BIOLOGICS. The commission may control the sale and distribution of all veterinary biologics except rabies vaccine. Rabies vaccine shall be sold, distributed, dispensed, and administered in compliance with Chapter 826, Health and Safety Code and the rules adopted thereunder by the Texas Board of Health.

Acts 1981, 67th Leg., p. 1396, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., p. 2605, ch. 693, Sec. 25, eff. Jan. 1, 1982; Acts 1985, 69th Leg., ch. 723, Sec. 3, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(73), eff. Sept. 1, 1991.

Sec. 161.043. REGULATION OF EXHIBITIONS. The commission may regulate the entry of livestock, domestic animals, and domestic fowl into exhibitions, shows, and fairs and may require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.

Acts 1981, 67th Leg., p. 1396, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.044. REGULATION OF LIVESTOCK MOVEMENT FROM STOCKYARDS OR RAILWAY SHIPPING PENS. The commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.

Acts 1981, 67th Leg., p. 1396, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.045. EMPLOYEES; CHIEF VETERINARIAN. The commission may employ personnel as necessary in the administration of this chapter or other duties of the commission, including a chief veterinarian, a first assistant veterinarian, other veterinarians, and clerical personnel.

Acts 1981, 67th Leg., p. 1396, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.046. RULES. The commission may adopt rules as necessary for the administration and enforcement of this chapter.

Acts 1981, 67th Leg., p. 1396, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 14, eff. Sept. 1, 1989.

Sec. 161.047. ENTRY POWER. (a) A commissioner or a veterinarian or inspector employed by the commission may enter public or private property for the exercise of an authority or performance of a duty under this chapter.

(b) If the commissioner, veterinarian, or inspector under Subsection (a) of this section desires to be accompanied by a peace officer, he or she shall apply for a search warrant to a magistrate of the county in which the property is located. The magistrate shall issue the search warrant on a showing of probable cause by oath or affirmation. The search warrant shall describe the place to be entered in a reasonable manner that will enable the owner or caretaker of the property to identify the property described, but the warrant is not required to describe the property by field notes or by metes and bounds.

(c) A search warrant issued under this section authorizes the person to whom it is issued to be accompanied by a peace officer and by as many assistants as the person considers necessary.

(d) A search warrant issued under this section permits entry and reentry for the purposes of this section for 30 days after the day on which it is issued. After that period, additional search warrants may be issued as often as necessary.

Acts 1981, 67th Leg., p. 1396, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.048. INSPECTION OF SHIPMENT OF ANIMALS OR ANIMAL PRODUCTS. (a) An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to:

(1) determine if the shipment is in compliance with the laws and rules administered by the commission affecting the shipment;

(2) determine if the shipment originated from a quarantined area or herd; or

(3) determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

(b) The commission may detain a shipment of animals or animal products that is being transported in violation of law or a rule of the commission. The commission may require that the shipment be unloaded at the nearest available loading facility.

(c) The commission may not inspect a railroad train at any point other than a terminal.

(d) The commission may post signs on public highways and use signaling devices, including red lights, in conjunction with signs, if necessary to effectively signal and stop vehicles for inspection.

(d-1) The commission may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

(e) In this section, "animal product" includes hides; bones; hoofs; horns; viscera; parts of animal bodies; litter, straw, or hay used for bedding; and any other substance capable of carrying insects or a disease that may endanger the livestock industry.

Acts 1981, 67th Leg., p. 1397, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 554, Sec. 16, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 4, eff. June 18, 2005.

Sec. 161.049. DEALER RECORDS. (a) In this section, "dealer" means a person engaged in the business of buying or selling animals in commerce:

(1) on the person's own account;

(2) as an employee or agent of the vendor, the purchaser, or both; or

(3) on a commission basis.

(b) A "dealer" as defined by Subsection (a) of this section does not include a person who buys or sells animals as part of the person's bona fide breeding, feeding, dairy, or stocker operations but does include livestock markets and commission merchants.

(c) The commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

(d) The commission may inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals.

(e) The commission by rule shall adopt the form and content of the records maintained by a dealer under Subsection (c) of this section.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 15, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 17, eff. Sept. 1, 1995.

Sec. 161.050. INJUNCTION. The commission is entitled to appropriate injunctive relief to prevent or abate a violation of a statute administered or enforced by the commission or a rule adopted or order issued by the commission under such a statute. On request of the commission, the attorney general shall file suit for the injunctive relief. Venue is in Travis County.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 16, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 548, Sec. 3, eff. Sept. 1, 1993.

Sec. 161.051. MEMORANDUM OF UNDERSTANDING ON ENFORCEMENT OF COMMISSION POWERS. (a) The commission and the Department of Public Safety by rule shall adopt a joint memorandum of understanding that includes provisions under which Department of Public Safety officers are to check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of the officers' duties. The memorandum shall require:

(1) commission staff to provide information to Department of Public Safety officers regarding health papers and permits;

(2) Department of Public Safety officers to report potential problems to the commission;

(3) commission staff to investigate possible violations reported by Department of Public Safety officers;

(4) Department of Public Safety officers to provide assistance when requested by the commission; and

(5) commission personnel to notify the Department of Public Safety, when appropriate, of the location of commission roadblocks or special or night operations.

(b) The commission and the Department of Public Safety shall review and update the memorandum not later than the last month of each state fiscal year.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 17, eff. Sept. 1, 1989.

Sec. 161.052. MEMORANDUM OF UNDERSTANDING ON COOPERATION WITH LOCAL AUTHORITIES. (a) The commission and the commissioners court of a county by rule may adopt a joint memorandum of understanding that includes provisions under which the sheriff of that county or the sheriff's deputies are to check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of the sheriff's or the deputies' duties. The memorandum shall require:

(1) commission staff to provide information to the sheriff and the deputies regarding health papers and permits;

(2) the sheriff and the deputies to report potential problems to the commission;

(3) commission staff to investigate possible violations reported by the sheriff or the deputies;

(4) the sheriff or deputies to provide assistance when requested by the commission; and

(5) commission personnel to notify the sheriff, when appropriate, of commission roadblocks located in the county or special or night operations planned for the county.

(b) The commission and each commissioners court with which the commission adopted a memorandum of understanding shall review and update the memorandum not later than the last month of each state fiscal year.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 18, eff. Sept. 1, 1989.

Sec. 161.0525. MEMORANDUM OF UNDERSTANDING ON COOPERATION WITH OTHER STATES. The commission by rule, subject to approval by the governor, may adopt a joint memorandum of understanding with another state that includes provisions under which the commission and the other state may provide assistance to each other in the case of an animal disease outbreak.

Added by Acts 1999, 76th Leg., ch. 764, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.053. COOPERATIVE AGREEMENTS. The commission may enter

into a cooperative agreement with the department to use for animal health purposes livestock export pens controlled by the department.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 18, eff. Sept. 1, 1995.

Sec. 161.054. REGULATION OF MOVEMENT OF ANIMALS; EXCEPTION. (a) As a control measure, the commission by rule may regulate the movement of animals, including feral swine. The commission may restrict the intrastate movement of animals, including feral swine, even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

(b) The commission by rule may prohibit or regulate the movement of animals, including feral swine, into a quarantined herd, premise, or area.

(c) The commission may not adopt a rule that prohibits a person from moving animals, including feral swine, owned by that person within unquarantined contiguous lands owned or controlled by that person.

(d) On application of the owner of an animal, including a feral swine, a restriction on the movement of the animal imposed under this chapter may be modified by order of the executive director of the commission if the owner demonstrates that the restriction will result in unusual hardship for the owner. In considering an application under this section, the executive director may consider the effect of prolonged drought, inadequacy of pasturage or unusual feed supply resulting from disaster or other unforeseeable circumstances, or economic hardship.

(e) In connection with the regulation of the movement of feral swine, the commission by rule may require disease testing before movement of a feral swine from one location to another, and establish the conditions under which feral swine may be transported.

(f) The commission's authority to regulate the movement of feral swine may not interfere with the authority of the Parks and Wildlife Department to regulate the hunting or trapping of feral swine.

Added by Acts 1995, 74th Leg., ch. 31, Sec. 1, eff. April 27, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 13, eff. September 1, 2007.

Sec. 161.0541. ELK DISEASE SURVEILLANCE PROGRAM. (a) The commission by rule may establish a disease surveillance program for elk.

(b) Rules adopted under this section must:

(1) require each person who moves elk in this state to have elk tested for chronic wasting disease or other diseases as determined by the commission;

(2) be designed to protect the health of the elk population in this state; and

(3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program.

(c) A person commits an offense if the person knowingly violates a rule adopted by the commission under this section.

(d) An offense under Subsection (c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 948 (H.B. 3330), Sec. 1, eff. September 1, 2009.

Sec. 161.0545. MOVEMENT OF ANIMAL PRODUCTS. The commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The commission by rule may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Added by Acts 1999, 76th Leg., ch. 764, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.055. SLAUGHTER PLANT COLLECTION. (a) The commission may require slaughter plants to collect and submit blood samples and other diagnostic specimens for testing for disease.

(b) The commission by rule shall determine the method of

collecting, submitting, and testing of blood samples and other diagnostic specimens.

(c) The owner or operator of a slaughter plant commits an offense if the slaughter plant fails to comply with this section or a rule adopted under this section. An offense under this subsection is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 273, Sec. 1, eff. Sept. 1, 1997.

Sec. 161.056. ANIMAL IDENTIFICATION PROGRAM. (a) In order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, the commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 181, Sec. 2, eff. May 25, 2013.

(c) The commission may adopt rules to require the use of official identification as part of the animal identification program under Subsection (a) for animal disease control or animal emergency management.

(d) The commission may by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a program allowed by Subsection (a) only for control of a specific animal disease or for animal emergency management.

(e) Information collected by the commission under this section is exempt from the public disclosure requirements of Chapter 552, Government Code. The commission may provide information to another person, including a governmental entity, without altering the confidential status of the information. The commission may release information to:

(1) a person who owns or controls animals and seeks information regarding those animals, if the person requests the information in writing;

(2) the attorney general's office, for the purpose of law enforcement;

(3) the secretary of the United States Department of

Agriculture, for the purpose of animal health protection;

(4) the secretary of the Department of Homeland Security, for the purpose of homeland security;

(5) the Department of State Health Services, for the purpose of protecting the public health from zoonotic diseases;

(6) any person, under an order of a court of competent jurisdiction;

(7) a state, municipal, or county emergency management authority, for the purpose of management or response to natural or man-made disasters; or

(8) any person the executive director of the commission considers appropriate, if the executive director determines that:

(A) livestock may be threatened by a disease, agent, or pest; and

(B) the release of the information is related to actions the commission may take under this section.

(f) Notwithstanding Subsection (e), the commission shall release information collected under this section if the release is necessary for emergency management purposes under Chapter 418, Government Code. The release of information under this subsection does not alter the confidential status of the information.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 181, Sec. 2, eff. May 25, 2013.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 181, Sec. 2, eff. May 25, 2013.

(i) The commission may adopt rules necessary to implement and enforce this section.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 18, eff. Sept. 1, 1995.
Renumbered from Agriculture Code Sec. 161.054 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(2), eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 203 (H.B. 1361), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 181 (H.B. 2311), Sec. 1, eff. May 25, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 181 (H.B. 2311), Sec. 2, eff. May 25, 2013.

Sec. 161.057. CLASSIFICATION OF AREAS. (a) The commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

(b) The commission by rule may designate as a particular classification an area consisting of one or more counties.

Added by Acts 1995, 74th Leg., ch. 31, Sec. 1, eff. April 27, 1995. Renumbered from Sec. 161.053 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(2), eff. Sept. 1, 1999.

Sec. 161.058. COMPENSATION OF LIVESTOCK OR FOWL OWNER. (a) The commission may pay an indemnity to the owner of livestock, domestic fowl, or exotic fowl exposed to or infected with a disease if the commission considers it necessary to eradicate the disease and to dispose of the exposed or diseased livestock, domestic fowl, or exotic fowl. The commission shall provide the owner with information regarding available state or federal indemnity funds.

(b) The commission may adopt rules for the implementation of this section, including rules governing:

(1) eligibility for compensation;

(2) amounts of compensation; and

(3) limits and restrictions on compensation.

(c) The commission may spend funds appropriated for the purpose of this section only for direct payment to owners of exposed or infected livestock, domestic fowl, or exotic fowl.

Added by Acts 1999, 76th Leg., ch. 764, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 149 (H.B. 1521), Sec. 3, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 149 (H.B. 1521), Sec. 4, eff. May 24, 2013.

Sec. 161.059. QUALITY ASSURANCE ASSISTANCE. On request of an organization representing producers of a commodity in an industry regulated by the commission, the commission may assist in the development, support, and oversight of a food safety or quality

assurance program, including the provision of testing services.

Added by Acts 2001, 77th Leg., ch. 410, Sec. 2, eff. May 28, 2001.

Sec. 161.060. AUTHORITY TO SET AND COLLECT FEES. (a) The commission may charge a fee, as provided by commission rule, for an inspection made by the commission.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 5(a), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1288 (H.B. 1992), Sec. 1, eff. September 1, 2011.

Sec. 161.0601. CERTIFICATES OF VETERINARY INSPECTION. (a) The commission by rule may provide for the issuance, including electronically, of a certificate of veterinary inspection by a veterinarian to a person transporting livestock, exotic livestock, domestic fowl, or exotic fowl.

(b) The commission by rule shall set and charge a fee for each certificate of veterinary inspection provided to a veterinarian under this section.

Added by Acts 2005, 79th Leg., Ch. 205 (H.B. 1363), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1090 (H.B. 3569), Sec. 2, eff. September 1, 2013.

Sec. 161.0602. PERSONS OR LABORATORIES PERFORMING EQUINE INFECTIOUS ANEMIA TESTS. (a) The commission shall adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official equine infectious anemia test.

(b) Rules adopted under this section must include:

(1) approval requirements;

(2) provisions governing the issuance, renewal, and revocation of an approval;

(3) inspection requirements;

(4) recordkeeping requirements;

(5) equine infectious anemia testing methods approved by the commission; and

(6) proficiency standards.

Added by Acts 2015, 84th Leg., R.S., Ch. 1264 (H.B. 3738), Sec. 1, eff. September 1, 2015.

SUBCHAPTER D. QUARANTINES

Sec. 161.061. ESTABLISHMENT. (a) If the commission determines or is informed that a disease listed in Section 161.041 of this code exists in another state, territory, or country, the commission shall establish a quarantine against all or the portion of the state, territory, or country in which the disease exists.

(b) If the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(c) The commission may establish a quarantine to prohibit or regulate the movement of:

(1) any article or animal that the commission designates to be a carrier of a disease listed in Section 161.041 of this code or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited; and

(2) an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

Acts 1981, 67th Leg., p. 1397, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 31, Sec. 2, eff. April 27, 1995; Acts 1995, 74th Leg., ch. 554, Sec. 19, eff. Sept. 1, 1995.

Sec. 161.0615. STATEWIDE OR WIDESPREAD QUARANTINE. (a) The commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

(b) The commission by rule may delegate its authority to quarantine livestock, exotic livestock, domestic fowl, or exotic fowl under this section to the executive director, who shall promptly notify the members of the commission of the quarantine.

(c) The commission by rule shall prescribe the manner in which notice of a statewide or widespread quarantine under this section is to be published.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 15, eff. September 1, 2007.

Sec. 161.062. PUBLICATION OF NOTICE. (a) Except as provided by Section 161.0615, the commission shall give notice of a quarantine against another state, territory, or country by publishing notice in a newspaper published in Texas. The quarantine takes effect on the date of publication. The commission shall pay the expense of publication out of any appropriation made for office and stationery expenses of the commission.

(b) The commission shall give notice of a quarantine established within this state by publishing notice in a newspaper published in the county in which the quarantine is established, by posting notice at the courthouse door of that county, or by delivering a written notice to the owner or caretaker of the animals or places to be quarantined. The commission may pay the expense of publication or posting out of any appropriation made for the office and stationery expenses of the commission or out of any appropriation made for the control or eradication of communicable diseases of livestock. The commissioners court of a county in which a quarantine is established may pay the expenses of publication or posting out of any available funds of the county.

Acts 1981, 67th Leg., p. 1398, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 14, eff. September 1, 2007.

Sec. 161.063. CONTENTS OF NOTICE. (a) A quarantine notice must state the requirements and restrictions under which animals may be permitted to enter this state or to be moved from a quarantined area within this state. If the seriousness of the disease is sufficient to warrant prohibiting the movement of animals, the notice must state that the movement is prohibited. The quarantine notice must state the class of persons authorized by the commission to issue certificates or permits permitting movement.

(b) A quarantine notice must state the cause for which the quarantine is established, whether for infection or for exposure.

(c) A quarantine notice must describe the area or premises quarantined in a reasonable manner that enables a person to identify the area or premises, but is not required to describe the area or premises by metes and bounds.

(d) If the quarantine regulates or prohibits the movement of a carrier or potential carrier of a disease, the commission may prescribe any exceptions, terms, conditions, or provisions that the commission considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the quarantine without endangering those objectives or the health and safety of the public. Any exceptions, terms, conditions, or provisions prescribed under this subsection must be stated in the quarantine notice.

Acts 1981, 67th Leg., p. 1398, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.064. EFFECT OF QUARANTINE. A quarantine that is established for any location has the effect of quarantining all livestock, domestic animals, or domestic fowl of the kind mentioned in the quarantine notice that are on or enter that location during the existence of the quarantine, regardless of who owns or controls the livestock, domestic animals, or domestic fowl.

Acts 1981, 67th Leg., p. 1398, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.065. MOVEMENT FROM QUARANTINED AREA; MOVEMENT OF QUARANTINED ANIMALS. (a) Except as provided by Subsection (b) of this section, a person, in violation of a quarantine, may not:

(1) move livestock, domestic animals, or domestic fowl in this state from any quarantined place in or outside this state;

(2) move quarantined livestock, domestic animals, or domestic fowl from the place in which they are quarantined; or

(3) move commodities or animals designated as disease carriers or potential disease carriers in this state from a quarantined place in or outside this state.

(b) The commission may provide for a written certificate or written permit authorizing the movement of commodities or animals from quarantined places or the movement of quarantined commodities or animals. The certificate or permit must be issued by a veterinarian or other person authorized by the commission to issue a certificate or permit. Each certificate or permit must be issued in conformity with the requirements stated in the quarantine notice.

(c) If the commission finds animals that have been moved in violation of a quarantine established under this chapter or in violation of any other livestock sanitary law, the commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the commission.

Acts 1981, 67th Leg., p. 1398, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. REGULATION OF IMPORTATION OF ANIMALS

Sec. 161.081. IMPORTATION OF ANIMALS. (a) The commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

(b) The commission by rule may provide the method for inspecting and testing animals before and after entry into this state.

(c) The commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to

issue the certificates or permits.

(d) Repealed by Acts 2005, 79th Leg., Ch. 205, Sec. 2, eff. September 1, 2005.

Acts 1981, 67th Leg., p. 1399, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 68, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 836, Sec. 19, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 554, Sec. 20, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 205 (H.B. 1363), Sec. 2, eff. September 1, 2005.

SUBCHAPTER F. VETERINARIAN REPORTS OF DISEASED ANIMALS

Sec. 161.101. DUTY TO REPORT. (a) A veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the following diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease:

(1) anthrax;
(2) avian infectious laryngotracheitis;
(3) avian influenza;
(4) avian tuberculosis;
(5) bovine trichomoniasis;
(6) chronic wasting disease;
(7) duck virus enteritis;
(8) duck virus hepatitis;
(9) equine encephalomyelitis;
(10) equine herpes virus-1;
(11) equine infectious anemia;
(12) equine viral arteritis;
(13) infectious encephalomyelitis in poultry or other fowl;
(14) ornithosis;
(15) paramyxovirus infection in poultry or other fowl; or
(16) scabies in sheep or cattle.

(b) In addition to reporting required by Subsection (a), the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of a disease other than

bluetongue in an animal to the commission within 24 hours after diagnosis if the disease:

(1) is recognized by the United States Department of Agriculture as a foreign animal disease;

(2) is the subject of a cooperative eradication program with the United States Department of Agriculture;

(3) is a disease reportable to the Office International Des Epizooties; or

(4) is the subject of a state of emergency, as declared by the governor.

(c) The commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by Subsection (a) or (b) if the commission determines that action to be necessary for the protection of animal health in this state. The commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

(d) The commission may not adopt, amend, or repeal a rule under this section unless the commission holds a public hearing on the proposed action following public notice of the hearing.

Acts 1981, 67th Leg., p. 1401, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 27, ch. 3, Sec. 23, eff. June 27, 1983; Acts 1995, 74th Leg., ch. 554, Sec. 21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 764, Sec. 2, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 510, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 1312, Sec. 9, eff. June 21, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 198 (H.B. 4006), Sec. 1, eff. September 1, 2009.

Sec. 161.102. SUBMISSION OF SPECIMEN OF ANTHRAX VICTIM. Immediately after pronouncing that an animal has died from anthrax, as evidenced by a clinical or postmortem examination, a veterinarian shall prepare and submit to the commission or a laboratory approved

by the commission:

(1) a suitable specimen from the animal;

(2) the name and address of the owner or caretaker of the animal; and

(3) the location of the premises on which the animal died.

Acts 1981, 67th Leg., p. 1402, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.103. NOTICE OF REQUIRED METHOD OF DISPOSAL. A veterinarian who knows or suspects that livestock or domestic fowl have died from anthrax or ornithosis shall inform the owner or caretaker of the animal to dispose of each carcass by fire in accordance with Section 161.004 of this code.

Acts 1981, 67th Leg., p. 1402, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. REGULATION OF LIVESTOCK MARKETS

Sec. 161.111. DEFINITION. In this subchapter, "livestock market" means a stockyard, sales pavilion, or sales ring where livestock, exotic livestock, or exotic fowl are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange.

Acts 1981, 67th Leg., p. 1402, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 22, eff. Sept. 1, 1995.

Sec. 161.112. RULES. (a) Following notice and public hearing, the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

(b) Following notice and public hearing, the commission may adopt rules requiring permits for moving exotic livestock and exotic fowl from livestock markets as necessary to protect against the spread of communicable diseases.

Acts 1981, 67th Leg., p. 1402, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1995, 74th Leg., ch. 554, Sec. 23, eff. Sept. 1, 1995.

Sec. 161.113. TESTING OR TREATMENT OF LIVESTOCK. (a) If the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination.

(b) If the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

(c) The commission may require the owner or operator of a livestock market to furnish adequate chutes or holding pens or to furnish or have access to other essential testing and dipping facilities within the immediate vicinity of the livestock market.

Acts 1981, 67th Leg., p. 1402, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 995, ch. 235, art. 1, Sec. 6, eff. Sept. 1, 1983.

Sec. 161.114. INSPECTION OF LIVESTOCK. An authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

Acts 1981, 67th Leg., p. 1403, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2005, 79th Leg., Ch. 204 (H.B. 1362), Sec. 1, eff. May 27, 2005.

Sec. 161.115. ENTRY POWER. An agent of the commission is entitled to enter any livestock market for the exercise of authority or performance of a duty under this subchapter.

Acts 1981, 67th Leg., p. 1403, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.116. SALE OR DELIVERY OF DISEASED CATTLE. (a) In this action, "diseased" means affected by actinobacillosis, actinomycosis, carcinoma, mastitis, or any other disease that renders the carcass of an animal potentially dangerous for human consumption and has been so designated by rule of the commission.

(b) Except as provided by Subsection (c) of this section, a person may not sell diseased cattle unless:

(1) the cattle are sold through a livestock market where visual examination of livestock is made by an agent of the commission or by the United States Department of Agriculture; or

(2) the cattle are sold by a recognized slaughtering establishment maintaining federal, state, or state-approved veterinary postmortem inspection.

(c) The original owner of diseased cattle may sell the cattle in violation of Subsection (b) of this section if the cattle are sold and delivered on the premises of the original owner, but the purchaser shall comply with the requirements of this section.

(d) A person may not release diseased cattle from a livestock market unless the cattle are:

(1) consigned directly to a federally approved terminal market or to a slaughtering establishment maintaining federal, state, or state-approved veterinary postmortem inspection; and

(2) accompanied by a certificate or permit issued by a representative of the commission or the United States Department of Agriculture naming the terminal market or slaughtering establishment.

(e) This section does not prevent the original owner of diseased cattle, or an agent of the owner, from voiding the sale of the cattle if the owner is not satisfied with the top bid price, but the owner shall obtain a certificate or permit under Subsection (d) of this section and shall deliver the cattle to the place specified on the certificate or permit. A person is not liable for a violation of this subsection unless the agent of the commission shows the person a list of approved establishments to which the cattle may be consigned and allows the person to select an establishment from that list.

(f) A person may not deliver or divert diseased cattle consigned under a certificate or permit issued under Subsection (d)

of this section to a place other than the terminal market or slaughtering establishment named in the certificate or permit. The cattle must be delivered to the terminal market or slaughtering establishment not later than the fifth day following the day on which the certificate or permit is issued.

(g) A person may not release diseased cattle from a terminal market or slaughtering establishment to which the cattle have been consigned under a certificate or permit issued under Subsection (d) of this section except on authority of the commission.

Acts 1981, 67th Leg., p. 1403, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER H. REMEDIES AND PENALTIES

Sec. 161.131. INJUNCTION. (a) Any citizen of this state may sue for an injunction to enforce a provision or restrain a violation of this chapter other than Section 161.048, Subchapter F, or Subchapter G.

(b) A court may hear and dispose of a suit under this section in term or in vacation. A court shall direct that reasonable notice be given to a defendant in a suit for a mandatory injunction.

Acts 1981, 67th Leg., p. 1404, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.132. CIVIL SUIT AGAINST NONRESIDENT VIOLATOR. (a) If a person who commits an offense under Section 161.135, 161.136, 161.137, 161.138, 161.141, or 161.143 of this code is not a resident of this state, is a foreign corporation not permitted to do business in this state, or is absent from this state at the time the offense is committed, the county attorney of the county in which the violation occurs shall sue that person for collection of the fine provided for the offense. In addition, the county attorney shall seek to attach that person's property in this state and, after final judgment, have the attached property sold under execution for the purpose of paying the fine and costs of suit.

(b) A suit under this section shall be brought in the name of the State of Texas and the court may not require a cost or attachment bond.

Acts 1981, 67th Leg., p. 1404, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.133. VIOLATION BY CORPORATION. If a corporation, including a railroad company or a common carrier, violates a provision of this chapter other than Section 161.048, Subchapter F, or Subchapter G, the county attorney of the county in which the offense occurs shall file and prosecute a civil suit against the corporation on behalf of the state.

Acts 1981, 67th Leg., p. 1404, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.134. PROOF OF TREATMENT OR VACCINATION. In the trial of any case involving the compliance of an owner or caretaker with a provision of this chapter requiring the treatment, vaccination, dipping, or disinfecting of livestock, a person may not attempt to prove that the action was taken by a person other than an authorized representative of the commission.

Acts 1981, 67th Leg., p. 1404, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 161.135. IMPROPER DISPOSAL OF DISEASED CARCASS. (a) A person required to dispose of a diseased carcass in accordance with Section 161.004 of this code commits an offense if the person fails to dispose of the carcass in accordance with that section.

(b) An offense under this section is a Class B misdemeanor for each animal carcass improperly disposed of.

Acts 1981, 67th Leg., p. 1404, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 20, eff. Sept. 1, 1989.

Sec. 161.136. ENTRY OF ANIMALS IN EXHIBITION WITHOUT CERTIFICATE. (a) A person commits an offense if, without a certificate required by rule of the commission under Section 161.043 of this code, the person:

(1) enters livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into an exhibition, show, or fair; or

(2) brings livestock, exotic livestock, domestic animals,

domestic fowl, or exotic fowl on the grounds of an exhibition, show, or fair for the purpose of entering.

(b) A person commits an offense if, as owner or person in charge of the exhibition, show, or fair, the person permits entry under Subsection (a) of this section.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(d) Each entry of an animal without a certificate in an exhibition, show, or fair constitutes a separate offense.

Acts 1981, 67th Leg., p. 1404, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 21, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 554, Sec. 24, eff. Sept. 1, 1995.

Sec. 161.137. MOVEMENT OF ANIMALS FROM STOCKYARD OR RAILWAY SHIPPING PEN WITHOUT CERTIFICATE. (a) A person commits an offense if the person:

(1) removes livestock from a stockyard or railway shipping pen without a certificate required by rule of the commission under Section 161.044 of this code; or

(2) as owner or person in charge of the stockyard or pen, permits the removal of livestock under Subdivision (1) of this section.

(b) An offense under this section is a Class C misdemeanor for each head of livestock moved as prohibited by Subsection (a) of this section unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1405, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 22, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 5, eff. Sept. 1, 1993.

Sec. 161.1375. MOVEMENT OF FERAL SWINE. (a) A person commits an offense if the person recklessly:

(1) moves feral swine in a manner that is not in compliance

with rules adopted by the commission under Section 161.0412 or 161.054; or

(2) as the owner or person in charge of a holding facility in which a feral swine is held, permits another to remove feral swine from the holding facility in a manner that is not in compliance with those rules.

(b) An offense under this section is a Class C misdemeanor for each feral hog that is moved or permitted to be removed unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 16, eff. September 1, 2007.

Sec. 161.138. REFUSAL TO PERMIT ENTRANCE. (a) A person commits an offense if the person refuses to permit a representative of the commission to enter property or premises of which the person is the owner, tenant, or caretaker for the purpose of carrying out a provision of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each day of refusal under Subsection (a) of this section.

Acts 1981, 67th Leg., p. 1405, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 23, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 6, eff. Sept. 1, 1993.

Sec. 161.139. REFUSAL TO PERMIT INSPECTION OF SHIPMENT. (a) A person commits an offense if the person:

(1) refuses to permit inspection of animals under Section 161.048 of this code; or

(2) fails to stop a truck, trailer, wagon, or automobile suspected of carrying animals or animal products if requested or signaled to do so by an agent of the commission.

(b) An offense under this section is a Class C misdemeanor

unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1405, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 24, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 7, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 554, Sec. 25, eff. Sept. 1, 1995.

Sec. 161.140. REFUSAL TO PERMIT EXAMINATION OF ANIMAL OR CARCASS. (a) A person commits an offense if the person:

(1) refuses to allow the commission or an agent of the commission to examine an animal or all or part of an animal carcass that is owned by or possessed by the person and that the commission or agent has reason to believe is affected by a communicable disease; or

(2) hinders or obstructs the commission or its agent in an examination under Subdivision (1) of this subsection.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1405, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 25, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 554, Sec. 26, eff. Sept. 1, 1995.

Sec. 161.1405. REFUSAL TO PROVIDE ACCESS TO ANIMAL. (a) A person who is the owner or caretaker of livestock, exotic livestock, fowl, or exotic fowl commits an offense if the person knowingly refuses to gather the animals for testing, identification, inspection, or another procedure required by commission rule.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense on each day of refusal under Subsection (a) of this section.

Added by Acts 1995, 74th Leg., ch. 31, Sec. 3, eff. April 27, 1995.

Sec. 161.141. MOVEMENT IN VIOLATION OF QUARANTINE. (a) A person commits an offense if the person violates Section 161.065(a)(1) or (a)(2) of this code or, as owner or caretaker of the livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, the person permits movement in violation of Section 161.065(a)(1) or (a)(2) of this code. Except as provided by Subsection (c) or (d) of this section, an offense under this subsection is a Class C misdemeanor for each animal moved in violation of the quarantine unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(b) A person commits an offense if the person violates Section 161.065(a)(3) of this code or, as owner or caretaker of the commodities or animals, the person permits movement in violation of Section 161.065(a)(3) of this code. Except as provided by Subsection (c) or (d) of this section, an offense under this subsection is a Class C misdemeanor for each animal or shipment of commodities moved in violation of the quarantine unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) An offense under Subsection (a) or (b) of this section for violating a quarantine established in relation to foot-and-mouth disease is a Class A misdemeanor.

(d) A second or subsequent offense under Subsection (c) is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for not less than two years nor more than five years; and

(2) a fine of not more than $10,000.

(e) A person commits a separate offense for each county into which livestock, domestic animals, domestic fowl, disease carriers, or potential disease carriers are moved within six months following the original movement in violation of Section 161.065 of this code.

Acts 1981, 67th Leg., p. 1406, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 26, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 554, Sec. 27, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.006, eff. September 1, 2009.

Sec. 161.142. SALE OR MOVEMENT OF ANIMAL WITH GLANDERS. (a) A person commits an offense if the person:

(1) wilfully fails or refuses to place in secure confinement apart from all other livestock an animal of the horse or ass species that is diseased with glanders and is owned by that person or subject to that person's control;

(2) sells, trades, or offers to sell or trade an animal of the horse or ass species that the person knows or suspects to be diseased with glanders;

(3) drives, leads, or rides along or across a public highway an animal that the person knows is diseased with glanders; or

(4) permits an animal that the person knows is diseased with glanders to run at large on the open range.

(b) An offense under this section is a Class B misdemeanor.

(c), (d) Deleted by Acts 1989, 71st Leg., ch. 836, Sec. 27, eff. Sept. 1, 1989.

Acts 1981, 67th Leg., p. 1406, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 27, eff. Sept. 1, 1989.

Sec. 161.143. IMPORTATION OF ANIMALS. (a) A person, including a railroad company or other common carrier, commits an offense if the person knowingly moves an animal into this state in violation of a rule of the commission adopted under Section 161.081 of this code.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each animal moved in violation of a rule of the commission.

Acts 1981, 67th Leg., p. 1407, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 28, eff. Sept. 1,

1989; Acts 1993, 73rd Leg., ch. 548, Sec. 10, eff. Sept. 1, 1993.

Sec. 161.145. VETERINARIAN FAILURE TO REPORT DISEASED ANIMALS. (a) A person commits an offense if, as a veterinarian, the person wilfully fails or refuses to comply with a provision of Subchapter F of this chapter or with a rule adopted under that subchapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1407, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 29, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 764, Sec. 3, eff. Sept. 1, 1999.

Sec. 161.146. COMPLIANCE WITH LIVESTOCK MARKET REGULATION. (a) A person commits an offense if the person, as owner or operator of a livestock market, fails or refuses to furnish adequate facilities in accordance with Section 161.113(c) of this code or fails or refuses to permit an agent of the commission to enter the market, exercise an authority, or perform a duty under Subchapter G of this chapter. A person commits a separate offense for each day of failure or refusal.

(b) A person commits an offense if the person removes livestock from a livestock market without a certificate required by rule of the commission adopted under Subchapter G of this chapter.

(c) A person commits an offense if the person violates any provision of Subchapter G of this chapter or a rule adopted under that subchapter. A person commits a separate offense for each day on which the person violates a provision of the subchapter or a rule.

(d) A person commits an offense if the person violates a provision of Section 161.116 of this code. A person commits a separate offense for each animal sold, released, diverted, or delivered in violation of that section.

(e) An offense under Subsection (a), (c), or (d) of this section is a Class B misdemeanor. An offense under Subsection (b) of this section is a Class B misdemeanor for each animal removed from the livestock market.

Acts 1981, 67th Leg., p. 1407, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 30, eff. Sept. 1, 1989.

Sec. 161.147. FAILURE TO MAINTAIN DEALER RECORDS. (a) A person commits an offense if the person fails to maintain or permit the inspection of a record required under Section 161.049 of this code.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 31, eff. Sept. 1, 1989.

Sec. 161.148. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person who violates a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty shall not be based on a per head basis.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An executive director who determines that a violation has occurred may issue to the commission a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the commission by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commission's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(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.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) An executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

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

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York

Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 554, Sec. 28, eff. Sept. 1, 1995.

Sec. 161.149. TEST FOR EQUINE INFECTIOUS ANEMIA. (a) In this section, "equine animal" includes horses, mules, asses, ponies, and other members of the horse family, but does not include zebras.

(b) A person commits an offense if the person transfers ownership of an equine animal eight months of age or older that has not tested negative for equine infectious anemia during the 12 months preceding the date of the transfer unless the equine animal:

(1) is a nursing foal that is transferred with its dam and the dam has tested negative for equine infectious anemia during the 12 months preceding the date of the transfer; or

(2) is sold to slaughter to be tested for equine infectious anemia at a slaughter establishment.

(c) An offense under Subsection (b) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Added by Acts 1999, 76th Leg., ch. 263, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.150. FAILURE TO REGISTER FERAL SWINE HOLDING FACILITIES; HOLDING OF FERAL SWINE. (a) A person commits an offense if the person recklessly:

(1) maintains a feral swine holding facility that is not registered under Section 161.0412; or

(2) as the owner or person in charge of a holding facility

that is not registered under Section 161.0412, holds or permits another to hold a feral swine in the holding facility.

(b) Each feral swine held or permitted to be held in violation of Subsection (a)(2) constitutes a separate offense.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1242 (H.B. 2543), Sec. 16, eff. September 1, 2007.

CHAPTER 162. TUBERCULOSIS CONTROL

Sec. 162.001. DEFINITIONS. (a) In this chapter:

(1) "Caretaker" has the meaning assigned by Section 161.002 of this code.

(2) "Commission" means the Texas Animal Health Commission.

(b) References to animals in this chapter shall be construed to include all or part of the carcasses of the animals.

Acts 1981, 67th Leg., p. 1408, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 162.002. COOPERATIVE PROGRAM. (a) The commission may cooperate with the United States Department of Agriculture and the county commissioners courts in a cooperative program for the eradication of tuberculosis among cattle and the establishment of areas based on prevalence of the disease.

(b) The commissioners court of each county may cooperate with the commission and the United States Department of Agriculture in a cooperative program under this chapter, but shall cooperate if presented with a petition signed by at least 75 percent of the owners of cattle in the county as shown by the county tax rolls.

Acts 1981, 67th Leg., p. 1408, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 522, Sec. 1, eff. Sept. 1, 2001.

Sec. 162.003. TESTING. The commission by rule shall prescribe the manner, method, and system of testing cattle for tuberculosis

under a cooperative program.

Acts 1981, 67th Leg., p. 1409, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 162.004. CERTIFICATE OF TEST OR VACCINATION OF CATTLE OR OTHER ANIMALS. (a) For each tuberculosis test performed on cattle, hogs, or fowl, a veterinarian shall file a certificate with the commission that identifies the animals tested and shows:

(1) the name and post office address of the owner;

(2) the location of the premises and the animals;

(3) the date of the test;

(4) the kind of test conducted;

(5) the result of the test; and

(6) whether the test was an interstate, accredited herd, municipal, or private test.

(b) For each vaccination of hogs, a veterinarian shall file a certificate with the commission that shows:

(1) the name and post office address of the owner;

(2) the location of the premises;

(3) the number of hogs vaccinated; and

(4) the amount and serial number of the serum and virus or other biologics used.

(c) A certificate under this section must be in a form prescribed by the commission and must be sent to the commission within 48 hours after completion of the test or vaccination.

Acts 1981, 67th Leg., p. 1409, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 162.005. IDENTIFICATION OF CATTLE. If cattle examined by a veterinarian show a positive reaction to the tuberculin test or show evidence of tuberculosis infection by clinical or laboratory examination, the veterinarian shall:

(1) comply with any identification requirements of the commission; and

(2) not later than 48 hours after the identification, report the identification to the commission, together with the location, description, and number of animals identified.

Acts 1981, 67th Leg., p. 1409, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 2001, 77th Leg., ch. 522, Sec. 2, eff. Sept. 1, 2001.

Sec. 162.006. QUARANTINE. (a) The commission shall immediately quarantine cattle and the premises on which the cattle are located if the cattle show a positive reaction when tested for tuberculosis by a veterinarian recognized by the commission for that purpose.

(b) Before the establishment of a quarantine a person may not move the cattle that show a positive reaction from the enclosure in which they were located at the time of testing, and may not sell, trade, barter, grant, or loan those animals. After a quarantine is established, a person may not move any cattle from the quarantined premises without first obtaining a written permit from the commission.

(c) A person who violates this section may not be prosecuted under Chapter 161 of this code for the same act.

Acts 1981, 67th Leg., p. 1409, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 522, Sec. 3, eff. Sept. 1, 2001.

Sec. 162.009. TUBERCULOSIS MODIFIED ACCREDITED ADVANCED AND TUBERCULOSIS FREE AREAS. (a) As part of a cooperative program, the commission or its representative may examine, test, and retest any cattle in this state as necessary to maintain an area of this state as a tuberculosis modified accredited advanced area or to establish or maintain each area of this state as a tuberculosis free area under the uniform methods and rules of the United States Department of Agriculture and the rules of the commission.

(b) The commission or its representative may test or retest all or part of a herd of cattle at intervals considered necessary or advisable by the commission to control and eliminate tuberculosis in animals.

Acts 1981, 67th Leg., p. 1410, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 522, Sec. 4, eff. Sept. 1, 2001.

Sec. 162.010. DUTY OF OWNER OR CARETAKER TO ASSIST; NOTICE. (a) On written notice by the commission or its representative, the

owner, part owner, or caretaker of cattle shall assemble and submit the cattle for tuberculosis examination and testing. The notice must set the date and approximate time the cattle are to be tested and must be delivered by registered mail not later than the 10th day before that date.

(b) The person receiving the notice shall provide reasonable assistance in confining the cattle and providing facilities for proper administration of the test. The person shall return the cattle to the same place for observation at a time designated by the commission or its representative.

Acts 1981, 67th Leg., p. 1411, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 162.011. PENALTY FOR VETERINARIAN'S FAILURE TO FILE CERTIFICATE OR TO IDENTIFY ANIMALS. (a) A person commits an offense if, as a veterinarian, the person:

(1) fails to file a certificate under Section 162.004 or a report under Section 162.005; or

(2) fails to properly identify an animal under Section 162.005.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1411, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 32, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 11, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 522, Sec. 5, 6, eff. Sept. 1, 2001.

Sec. 162.012. PENALTY FOR MOVEMENT OR SALE OF QUARANTINED OR DISEASED CATTLE. (a) A person commits an offense if the person moves, sells, trades, barters, grants, or loans animals in violation of Section 162.006(b).

(b) An offense under this section is a Class B misdemeanor for each animal that was moved, sold, traded, bartered, granted, or loaned.

Acts 1981, 67th Leg., p. 1411, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 836, Sec. 33, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 522, Sec. 7, eff. Sept. 1, 2001.

Sec. 162.013. PENALTY FOR OWNER'S OR CARETAKER'S FAILURE TO ASSIST. (a) A person commits an offense if, as the owner, part owner, or caretaker of cattle, the person fails or refuses to assemble the cattle or to provide assistance in accordance with Section 162.010 of this code at the time and place provided in the notice issued by the commission.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each day of failure or refusal.

Acts 1981, 67th Leg., p. 1411, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 34, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 12, eff. Sept. 1, 1993.

Sec. 162.014. REVIEW OF CURRENT TUBERCULOSIS PROGRAMS AND IMPLEMENTATION OF IMPROVED PROGRAM. (a) The following agencies, colleges, and services jointly shall conduct a review of the state's current programs to research, control, and eradicate animal tuberculosis in both traditional and nontraditional farm and ranch animals:

(1) the commission;

(2) the Department of Agriculture;

(3) the Texas Agricultural Experiment Station;

(4) the Texas Agricultural Extension Service;

(5) the Texas Animal Damage Control Service;

(6) the Texas Department of Health;

(7) the College of Veterinary Medicine, Texas A&M University; and

(8) the Texas Veterinary Medical Diagnostic Laboratory.

(b) The Texas Agricultural Experiment Station is the coordinating agency for the review.

(c) Each agency, college, or service conducting the review

under Subsection (a) shall as part of its review seek the advice and opinions of persons who are involved in commercially raising or feeding traditional or nontraditional farm or ranch animals. The Texas Agricultural Experiment Station shall ensure that persons who are involved in commercially raising or feeding traditional or nontraditional farm or ranch animals have ample notice of and opportunity to comment on the review's findings and that the comments of those persons are considered part of the review's findings.

(d) The agencies, colleges, and services listed under Subsection (a) shall implement an improved program based on the review conducted under Subsection (a) that is designed to research, control, and eradicate animal tuberculosis in both traditional and nontraditional farm and ranch animals. The agencies, colleges, and services shall agree on the elements of the improved program that will be implemented by each agency, college, or service. The improved program may not conflict with current law.

Added by Acts 1995, 74th Leg., ch. 89, Sec. 1, eff. May 16, 1995.

CHAPTER 163. BRUCELLOSIS CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 163.001. DEFINITIONS. (a) In this chapter:

(1) "Caretaker" has the meaning assigned by Section 161.002 of this code.

(2) "Commission" means the Texas Animal Health Commission.

(b) References to cattle in this chapter shall be construed to include all or part of the carcasses of cattle.

Acts 1981, 67th Leg., p. 1413, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 163.002. COOPERATIVE PROGRAM. In order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture.

Acts 1981, 67th Leg., p. 1413, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1983, 68th Leg., 1st C.S., p. 15, ch. 3, Sec. 2, eff. June 27, 1983.

Sec. 163.003. FEES. The commission may establish fees in amounts necessary to cover the cost of administering this chapter when combined with funds received from other sources.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 35, eff. Sept. 1, 1989.

SUBCHAPTER B. BRUCELLOSIS CONTROL AREAS

Sec. 163.021. CLASSIFICATION OF AREAS. (a) The commission by rule may prescribe criteria for classifying areas in the state for purposes of brucellosis control. The commission may prescribe differing control measures and procedures according to the classification of the areas. The classifications shall be based on criteria that use sound epidemiological principles and are similar to the criteria provided by federal brucellosis control regulations.

(b) The commission by rule may designate as a particular classification any area consisting of one county or two or more contiguous counties. The designation of an area for state purposes need not be the same as the designation of the area for federal purposes.

Acts 1981, 67th Leg., p. 1413, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 15, ch. 3, Sec. 3, eff. June 27, 1983.

SUBCHAPTER D. ENFORCEMENT

Sec. 163.061. RULES; REPORTS. Following notice and a hearing, the commission may adopt rules and require reports and records as necessary to carry out Subchapters A-D of this chapter, including rules, reports, and records that relate to the testing or vaccination of cattle or to the movement of cattle into and within an area.

Acts 1981, 67th Leg., p. 1415, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 17, ch. 3, Sec. 4, eff. June 27, 1983.

Sec. 163.062. EMPLOYEES. The commission may employ personnel, including veterinarians, inspectors, stenographers, and clerks, as necessary to the enforcement of Subchapters A-D of this chapter or the performance of duties under those subchapters. The commission may assign to those employees any duty under those subchapters.

Acts 1981, 67th Leg., p. 1415, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 163.063. ENTRY POWER. (a) A representative of the commission, including a member of the commission, is entitled to enter any public or private property for the exercise of authority or performance of a duty under Subchapters A-D of this chapter.

(b) A representative of the commission under Subsection (a) of this section who desires to be accompanied by a peace officer may apply for and be issued a search warrant in the manner provided by Section 161.047 of this code.

Acts 1981, 67th Leg., p. 1415, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 163.064. TESTING AND VACCINATION. (a) Only a person approved by the commission may perform testing and vaccinating for brucellosis, regardless of whether the person is a veterinarian.

(b) The commission by rule shall prescribe criteria for classifying cattle as negative, infected with brucellosis, or suspected of being infected with brucellosis. Each classification must be based on the testing of cattle. The testing may include serological testing, microbiological culturing of blood, tissue, secretions, or excretions, or both.

(c) The commission may by rule regulate and require the vaccination of female cattle within all or any of the area classifications. Among other rules, the commission may adopt rules providing for:

(1) the identification of cattle to be vaccinated;

(2) approval of the vaccine used; and

(3) the method of administering the vaccine.

(d) The commission by rule may regulate the sale and use of brucellosis antigens and vaccines. A person may not sell a brucellosis antigen or vaccine unless the antigen or vaccine is approved by the commission. A person may not administer a

brucellosis antigen or vaccine unless the antigen or vaccine is approved by the commission and the person is authorized by the commission to administer the antigen or vaccine.

Acts 1981, 67th Leg., p. 1416, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 17, ch. 3, Sec. 5, eff. June 27, 1983.

Sec. 163.065. BRANDING AND HANDLING OF DISEASED CATTLE. (a) If a tested animal shows evidence of infection with brucellosis, the person performing the test shall handle the animal in accordance with the rules of the commission. The commission may prescribe requirements according to the classification of the area in which the animal is located. Among other requirements, the commission may require the person performing the test to:

(1) furnish the owner of the animal with written data showing that the animal is infected;

(2) fire brand the animal on the left jaw with the letter "B";

(3) place an approved, numbered identification on the animal; and

(4) report the identification number in writing to the commission.

(b) If an animal shows evidence of infection, the herd of which it is a part shall also be handled in accordance with the rules of the commission, which may provide for:

(1) quarantines;

(2) the manner, method, and system of disposing of reactor cattle;

(3) the testing and retesting of the herd; or

(4) other measures, such as quarantine only, where the animals from the herd are sold exclusively for slaughter and where the commission's rules are in compliance with the current requirements of the Brucellosis Eradication Uniform Methods and Rules of the cooperative state-federal brucellosis eradication program.

Acts 1981, 67th Leg., p. 1416, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 19, ch. 3, Sec. 6, eff. June 27, 1983.

Sec. 163.066. REGULATION OF MOVEMENT OF CATTLE; EXCEPTION. (a) As a control measure, the commission by rule may regulate the movement of cattle. The commission may restrict the intrastate movement of cattle even though the movement of the cattle is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another procedure that is epidemiologically sound before or following the movement of cattle.

(b) The commission may not adopt a rule that prohibits a person from moving cattle owned by that person within unquarantined contiguous lands owned or controlled by that person.

(c) Any restriction on the movement of cattle imposed under provisions of this chapter may be modified or set aside by the commission upon application by the cattle owner, provided that the owner can show impending unusual hardship resulting from such restriction. Contributory factors may include but are not limited to prolonged drought, inadequacy of pasturage or usual feed supply resulting from disaster or other unforeseeable circumstance, or economic hardship of the cattle owner; provided that individual animals under restriction shall be handled in a manner to be prescribed by the commission.

Acts 1981, 67th Leg., p. 1417, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 20, ch. 3, Sec. 7, eff. June 27, 1983.

Sec. 163.069. INDIVIDUAL HERD PLANS. (a) The commission by rule may provide for the handling and treatment of individual herds in which testing or epidemiology has produced evidence of infection or which was adjacent to a herd in which infection is found. Each plan shall be designed to aid the caretaker of the herd in preventing or reducing spread of the infection and in eliminating the infection.

(b) Each herd plan must be based on sound epidemiological principles and the classification of the area in which the herd is located. In prescribing a herd plan, the commission may consider, among other items:

(1) the risk of the infection spreading to other herds;

(2) the cost to other herd owners resulting from spread of the infection;

(3) the extent of infection and of possible exposure within

the herd;

(4) the type of cattle operation conducted by the herd's caretaker; and

(5) the conditions affecting the economics and management of the herd.

Added by Acts 1983, 68th Leg., 1st C.S., p. 21, ch. 3, Sec. 9, eff. June 27, 1983.

Sec. 163.070. REQUIRED ASSISTANCE. If ordered by the commission or its representative, the owner or caretaker of cattle shall submit the cattle and furnish labor and facilities used in normal operation in order that the cattle may be tested, vaccinated, or otherwise handled in accordance with the rules of the commission.

Added by Acts 1983, 68th Leg., 1st C.S., p. 21, ch. 3, Sec. 9, eff. June 27, 1983.

Sec. 163.072. BLOOD SAMPLES. (a) The commission may require slaughter plants to collect and submit blood samples for brucellosis testing.

(b) The commission by rule shall determine the method of collecting, submitting, and testing of blood samples.

(c) The owner or operator of a slaughter plant commits an offense if the slaughter plant fails to comply with this section or a rule adopted under this section. An offense under this subsection is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., ch. 836, Sec. 36, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 548, Sec. 13, eff. Sept. 1, 1993.

SUBCHAPTER F. PENALTIES

Sec. 163.081. REFUSAL TO VACCINATE FEMALE CALVES. (a) A person commits an offense if the person refuses to vaccinate a female calf owned by that person in accordance with the rules of the

commission.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1418, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 22, ch. 3, Sec. 10, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 37, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 14, eff. Sept. 1, 1993.

Sec. 163.082. REFUSAL OF OWNER TO ASSIST. (a) A person who is the owner of cattle commits an offense if the person knowingly refuses to gather cattle or to furnish necessary labor and facilities in accordance with Section 163.070 of this code.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each day of refusal.

Acts 1981, 67th Leg., p. 1418, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 22, ch. 3, Sec. 11, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 38, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 15, eff. Sept. 1, 1993.

Sec. 163.083. REFUSAL OF ENTRY. (a) A person commits an offense if the person refuses to permit a representative of the commission to enter property or premises of which the person is the owner, tenant, or caretaker for the purposes of carrying out a provision of this chapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each day of

refusal.

Acts 1981, 67th Leg., p. 1418, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 23, ch. 3, Sec. 12, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 39, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 16, eff. Sept. 1, 1993.

Sec. 163.084. MOVEMENT OF CATTLE IN VIOLATION OF COMMISSION RULE. (a) A person, including a railway or a common carrier, commits an offense if the person knowingly moves an animal in violation of a rule of the commission.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1418, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 23, ch. 3, Sec. 13, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 40, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 17, eff. Sept. 1, 1993.

Sec. 163.085. FAILURE TO PROPERLY HANDLE INFECTED ANIMAL. (a) A person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1418, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 23, ch. 3, Sec. 14, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 41, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 18, eff. Sept. 1, 1993.

Sec. 163.086. SALE OF INFECTED CATTLE. (a) A person commits an offense if the person sells or otherwise disposes of an animal for purposes other than slaughter that the person knows to be infected with brucellosis.

(b) An offense under this section is a Class B misdemeanor.

(c) The sale or disposal of an animal with the letter "B" branded on the left jaw is prima facie evidence that the person knew the cow was infected with brucellosis.

Acts 1981, 67th Leg., p. 1418, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., 1st C.S., p. 23, ch. 3, Sec. 15, eff. June 27, 1983; Acts 1989, 71st Leg., ch. 836, Sec. 42, eff. Sept. 1, 1989.

Sec. 163.087. IMPROPER SALE OR USE OF VACCINE OR ANTIGEN. (a) A person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of Section 163.064 of this code.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1983, 68th Leg., 1st C.S., p. 24, ch. 3, Sec. 16, eff. June 27, 1983. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 43, eff. Sept. 1, 1989.

CHAPTER 164. SCABIES CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 164.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Animal Health Commission.

(2) "Inspector" means an inspector employed by the commission, including the chief inspector, a district supervising inspector, or a local inspector.

Acts 1981, 67th Leg., p. 1420, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.002. SCABIES INFECTION OR EXPOSURE. (a) For purposes of this chapter, cattle or sheep are scabies-infected if:

(1) actually infected with scabies; or

(2) in a herd in which scabies infection is present.

(b) Except as provided by Subsection (c) of this section, cattle or sheep are exposed to scabies for purposes of this chapter if:

(1) the cattle or sheep enter or have access to any place, including a corral, shed, car, road, or pasture, that scabies-infected cattle or sheep have entered or had access to during the preceding 90 days; or

(2) the sheep are shorn by a shearing plant that has shorn scabies-infected sheep within the preceding 90 days.

(c) Cattle or sheep are not exposed to scabies under Subsection (b) of this section if the place or plant has been disinfected since the infected cattle or sheep were removed. This subsection does not exempt the cattle or sheep from dipping required by this chapter.

(d) If an inspector determines that a scabies infection exists among cattle, sheep, or goats or that cattle, sheep, or goats have been exposed to scabies, the infection or exposure is considered to continue until the commission determines that the infection or exposure has been eradicated through methods prescribed by rule of the commission.

Acts 1981, 67th Leg., p. 1420, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.003. INSPECTORS. (a) For the purpose of eradicating scabies, the commission may employ a chief inspector, district supervising inspectors, and local inspectors.

(b) The chief inspector shall supervise the inspectors engaged in scabies eradication.

(c) The state shall pay the salaries of the chief inspector and the district supervising inspectors. The counties shall pay the salaries and necessary traveling expenses of local inspectors.

Acts 1981, 67th Leg., p. 1420, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.004. DUTIES OF INSPECTORS. (a) All dippings, inspections, and certifications for scabies eradication and the disinfection of cars, sheds, boats, chutes, alleys, platforms, pens, or yards required by this chapter shall be performed by or under the supervision of an inspector.

(b) Local inspectors shall perform all duties necessary to the

inspection, dipping, and certification of livestock under this chapter.

Acts 1981, 67th Leg., p. 1420, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.005. ENTRY POWER. (a) An inspector is entitled to enter any public or private place where cattle or sheep are kept or ranged for the purpose of:

(1) ascertaining the presence of scabies infection;

(2) ascertaining any exposure to scabies; or

(3) inspecting, classifying, or dipping cattle or sheep for scabies infection or exposure.

(b) If the inspector under Subsection (a) of this section desires to be accompanied by a peace officer, the inspector may apply for and obtain a search warrant as provided by Section 161.047 of this code.

(c) The person who owns or controls the place to be entered under this section or who owns or controls the animals shall, on request of the inspector or a member of the commission, gather the animals on the range for inspection. Failure or refusal to gather the animals is prima facie evidence that the premises and the animals are infected with scabies and authorizes the commission to quarantine the premises or animals in accordance with this chapter.

Acts 1981, 67th Leg., p. 1421, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.006. ACTIONS OF COMMISSION. The presiding officer of the commission may perform any act or duty of the commission under this chapter.

Acts 1981, 67th Leg., p. 1421, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 29, eff. Sept. 1, 1995.

SUBCHAPTER B. DIPPING

Sec. 164.021. DIPPING REQUIRED ON ORDER OF COMMISSION. (a) The commission by written order may direct a person who owns, controls, or cares for cattle or sheep that are scabies-infected or

are exposed to scabies, to dip any or all of those animals for the purpose of destroying, eradicating, curing, or removing a scabies infection or a source of exposure to scabies.

(b) An order of the commission under this section must be signed by the commission or the presiding officer of the commission and must contain the following:

(1) the date of issuance;

(2) the name of the person to whom the order is made;

(3) the approximate location of the premises on which the animals are located;

(4) the county in which the premises are located;

(5) a statement in clear and intelligible language that the sheep or cattle that the person owns, controls, or cares for are infected with or exposed to scabies;

(6) an order directing the person to dip the animals, under the supervision of an inspector and in the manner prescribed by the commission, in a dipping solution provided by this chapter or in a designated solution approved for that purpose by rule of the commission; and

(7) a designation of the date, time, and place that the dipping is to occur.

(c) An order under this section must be delivered to the person owning or controlling the cattle or sheep not later than the 14th day before the date and time for dipping designated in the order.

Acts 1981, 67th Leg., p. 1421, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 30, eff. Sept. 1, 1995.

Sec. 164.022. HEARING. (a) Not later than the fifth day following the day on which a person receives an order to dip cattle or sheep, the person may file with the commission or the presiding officer of the commission a written affidavit that:

(1) denies that the animals are subject to being dipped under this chapter, or states that, for good and sufficient reason set out in the affidavit, the person is entitled to have the order rescinded or the dipping postponed; and

(2) requests that the commission withhold enforcement of the order and grant a hearing on the matter or investigate the matter

as necessary to determine the correctness of the statement contained in the affidavit.

(b) Not later than the fifth day following the day on which the commission receives an affidavit under Subsection (a) of this section, the commission shall, if desired by the affiant, grant the affiant a hearing in the office of the presiding officer. The commission shall give the affiant notice of the hearing by telegram or registered mail and shall hold the hearing not earlier than the fourth day following the day of giving that notice.

(c) The commission shall consider the affidavit at the hearing and shall, in person or by agent, investigate the matter as the commission considers necessary.

(d) If the commission finds that the statement in the affidavit is correct, the commission shall rescind the order or postpone the dipping until a time that the commission considers proper. If the commission finds that the statement in the affidavit is not correct, the commission shall enforce the order on the date and at the time designated in the order.

(e) Following a hearing, the commission shall deliver its written findings to the affiant not later than the fourth day before the date and time that the order requires the animals to be dipped.

(f) A person who is dissatisfied with the findings of the commission under this section may apply to a court of proper venue and jurisdiction for an injunction or other relief.

Acts 1981, 67th Leg., p. 1422, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 31, eff. Sept. 1, 1995.

Sec. 164.023. METHOD OF DIPPING. If the commission requires the dipping of animals under this chapter, the animals shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by the commission.

Acts 1981, 67th Leg., p. 1422, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.024. DIPPING INTERVALS. (a) For psoroptic scabies infection or exposure, cattle or sheep shall be dipped at intervals of not less than 10 days nor more than 14 days.

(b) For sarcoptic scabies infection or exposure, cattle or sheep shall be dipped at intervals of not less than 6 days, except that cattle shall be dipped only once if dipped in crude oil.

Acts 1981, 67th Leg., p. 1423, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.025. DIP SOLUTIONS FOR SHEEP. (a) For scabies infection or exposure, sheep must be dipped in:

(1) a solution of lime and sulphur prepared as provided by this section; or

(2) a solution approved by the commission and specified in the order under which the sheep are dipped.

(b) For each 100 gallons of water, a lime and sulphur solution must contain 8 pounds of unslaked lime, or 11 pounds of commercial hydrated lime, and 24 pounds of flowers of sulphur. Air-slaked lime may not be used in the solution. The solution must be boiled for at least two hours prior to its use and must be maintained at a strength of not less than 1-1/2 sulfide sulphur.

(c) A dipping solution must at all times be maintained at a temperature of not less than 95 degrees nor more than 105 degrees Fahrenheit.

(d) A person may not use a dipping solution that has been mixed and in the vat for more than 10 days.

Acts 1981, 67th Leg., p. 1423, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.026. DIP SOLUTIONS FOR CATTLE. (a) For psoroptic scabies infection or exposure, cattle must be dipped in a solution provided by Section 164.025 of this code for sheep, except that a lime and sulphur solution must be maintained at a strength of not less than two percent sulfide sulphur.

(b) For sarcoptic scabies infection or exposure, cattle must be dipped in a solution provided by Section 164.025 of this code for sheep or in crude oil.

Acts 1981, 67th Leg., p. 1423, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.027. DIPPING OF GOATS. A person shall dip goats

ranging with scabies-infected sheep at least once in the same solution and in the same manner provided for the sheep, except that the goats may not be held in the dipping vat for a longer period than is necessary to thoroughly wet them.

Acts 1981, 67th Leg., p. 1423, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.028. DIPPING AT EXPENSE OF COUNTY. If a person ordered to dip cattle or sheep under this chapter fails or refuses to dip the animals, the county commissioners court shall provide necessary vats, pens, other facilities, and materials, shall have the animals dipped in accordance with this chapter, and shall pay the expenses of the dipping by warrant drawn on the general funds of the county.

Acts 1981, 67th Leg., p. 1423, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. QUARANTINES

Sec. 164.041. ESTABLISHMENT. (a) If the commission determines or is informed that scabies exists among cattle in another state, territory, or country, the commission shall establish a quarantine against all or the portion of the state, territory, or country in which the disease exists. The quarantine is governed by Chapter 161 of this code, except that only a scabies inspector recognized by the commission for that purpose in the quarantine notice may issue certificates or permits for the movement of cattle subject to the quarantine. A person who violates the quarantine is subject to the penalties provided by that chapter.

(b) If an inspector determines that a scabies infection or exposure exists in a county or area of this state, on any premises, including a road, pasture, lot, yard, stockyard, or enclosure, or among any cattle or sheep, the commission may quarantine the area, premises, or animals.

Acts 1981, 67th Leg., p. 1423, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.042. NOTICE. The commission shall give notice of a quarantine established under Section 164.041(b) of this code in one

of the following manners:

(1) by posting written notice of the quarantine at the courthouse door of the county in which the quarantine is established and at two other conspicuous places in the area or on the premises quarantined;

(2) by publishing notice in a newspaper in the county or, if there is no newspaper in the county, by publishing notice in a newspaper in an adjoining county; or

(3) by delivering written or printed notice to the owner or caretaker of the animals or premises to be quarantined, with the delivery made in person by a commission inspector, employee, or member or with the delivery made by United States mail.

Acts 1981, 67th Leg., p. 1424, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.043. EFFECT OF QUARANTINE. If a county or area is quarantined under Section 164.041(b) of this code, all premises within the county or area and all cattle and sheep within the county or area are quarantined even though not separately designated.

Acts 1981, 67th Leg., p. 1424, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.044. MOVEMENT FROM QUARANTINED PREMISES; MOVEMENT OF QUARANTINED ANIMALS. (a) A person may not move or permit to be moved cattle or sheep that are under quarantine for scabies infection or exposure or that are on premises quarantined for scabies infection or exposure unless the cattle or sheep are certified by a commission inspector.

(b) If the commission finds animals that have been moved in violation of a quarantine established under this chapter, the commission shall quarantine the animals until they have been properly tested or dipped in accordance with the rules of the commission.

Acts 1981, 67th Leg., p. 1424, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.045. DISINFECTION OF SHEARING PLANT IN QUARANTINED AREA. (a) If scabies-infected sheep located on premise quarantined for sheep scabies infection are shorn by an itinerant shearing plant

or crew, the person owning, controlling, or having charge of the plant or crew shall, in accordance with this section, disinfect the plant and the wearing apparel of the crew, including laborers who shear the sheep or pack the wool, before the plant or crew moves from the premises where the sheep are shorn.

(b) All utensils, machinery, floors, ground coverings, and other portions of the plant that come in contact with the body of the sheep must be thoroughly cleaned with pure gasoline. The wearing apparel of the shearers or laborers must be submerged in boiling water for at least five minutes.

Acts 1981, 67th Leg., p. 1424, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.046. DISINFECTION OF QUARANTINED PREMISES. (a) In accordance with this section, the owner, lessee, or person in charge of premises quarantined for sheep scabies shall cleanse and disinfect all places in which infected or exposed sheep have been closely confined, including corrals, water lots, pens, and sheds.

(b) The person shall remove and burn or bury all manure and litter and then spray the surface of the places in which the sheep were confined with a solution of six ounces of 95 percent carbolic acid to each gallon of water or a solution of four ounces of cresol compound USP to each gallon of water.

(c) Disinfection under this section must be performed under the supervision of a commission inspector and before uninfected or unexposed sheep are permitted to enter the places to be disinfected.

Acts 1981, 67th Leg., p. 1425, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER D. IMPORTATION OF SHEEP

Sec. 164.062. CERTIFICATE REQUIRED. (a) A person may not import sheep into this state unless the shipment is accompanied by a certificate certifying that:

(1) the sheep are free from scabies infection and exposure; or

(2) the sheep have been dipped in a solution recognized by the Animal and Plant Health Inspection Service, United States Department of Agriculture, for eradication of sheep scabies and in a manner designed to have eradicated infection or exposure within 10

days prior to the date of importation.

(b) A certificate under this section must be issued by an accredited veterinarian of the state of origin of the shipment or by a veterinarian of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Acts 1981, 67th Leg., p. 1425, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 44, eff. Sept. 1, 1989.

Sec. 164.063. QUARANTINE OF IMPORTED SHEEP. If the certificate for a shipment of sheep shows that the sheep were dipped at the point of origin in accordance with Section 164.062(a)(2) of this code, the sheep shall be quarantined at the range on which the sheep are placed in this state for a period of 180 days.

Acts 1981, 67th Leg., p. 1425, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.064. DESIGNATION OF INFECTED OR FREE AREAS; DIPPING REQUIREMENTS. The commission may adopt rules designating areas as infected or free from infection and shall establish dipping requirements for the importation of sheep into this state.

Acts 1981, 67th Leg., p. 1426, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.065. EXHIBITIONS. The commission shall provide an importer of show sheep a reasonable length of time, not to exceed 60 days after the date of importation, in which to display the sheep at county fairs or livestock exhibitions. The importer shall keep the sheep separate from all sheep other than show sheep and shall dip the sheep at least once before they are distributed to the range.

Acts 1981, 67th Leg., p. 1426, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. REMEDIES AND PENALTIES

Sec. 164.082. CIVIL SUITS TO RECOVER PENALTY FOR CORPORATE OFFENSE. If the person who commits an offense under this subchapter

is a corporation, the county attorney of the county in which the offense occurred shall sue that person in a court of competent jurisdiction on behalf of the state for the collection of the fine provided for the offense.

Acts 1981, 67th Leg., p. 1426, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 164.083. FAILURE TO DIP FOR SCABIES. (a) A person commits an offense if the person:

(1) owns, controls, or cares for cattle or sheep infected with scabies or cattle or sheep that have been exposed to scabies infection within six months prior to the date of an order to dip under Section 164.021 of this code; and

(2) fails or refuses to dip the sheep or cattle at the time and in the manner provided by the order of the commission.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense for each day of failure or refusal.

Acts 1981, 67th Leg., p. 1426, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 45, eff. Sept. 1, 1989.

Sec. 164.084. MOVEMENT OF INFECTED, EXPOSED, OR QUARANTINED ANIMALS. (a) A person commits an offense if the person:

(1) moves cattle or sheep in violation of Section 164.044(a) of this code; or

(2) moves or permits to be moved along or across a public highway or railroad, or on or across the land or premises of another person, cattle or sheep that are infected with scabies, exposed to scabies, or quarantined for scabies.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense under Subsection (a)(2) of this section for each highway, railroad, or person's land or premises along, across, or onto which the person moves the cattle or sheep.

(d) Venue for prosecution of an offense under Subsection (a)(2) of this section is in any county into which or through which the cattle or sheep are moved.

Acts 1981, 67th Leg., p. 1426, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 46, eff. Sept. 1, 1989.

Sec. 164.085. REFUSAL TO PERMIT ENTRY OR GATHER ANIMALS FOR INSPECTION. (a) A person commits an offense if the person:

(1) refuses to permit an inspector to enter any premises of which the person is the owner, tenant, or caretaker for the purpose of inspecting, classifying, or dipping animals infected or exposed to scabies; or

(2) refuses to gather animals in accordance with Section 164.005(c) of this code.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense for each day of refusal.

Acts 1981, 67th Leg., p. 1427, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 47, eff. Sept. 1, 1989.

Sec. 164.086. FAILURE TO DISINFECT SHEARING PLANT. (a) A person commits an offense if the person fails or refuses to disinfect all or part of a shearing plant, or the wearing apparel of each person shearing the sheep or handling or packing the wool, in accordance with Section 164.045 of this code.

(b) An offense under this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1427, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 48, eff. Sept. 1, 1989.

Sec. 164.087. FAILURE TO PROPERLY DISINFECT QUARANTINED PREMISES. (a) A person commits an offense if the person violates a provision of Section 164.046 of this code.

(b) An offense under this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1427, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 49, eff. Sept. 1,

1989.

Sec. 164.088. IMPORTATION OF SHEEP WITHOUT CERTIFICATE OR PERMIT. (a) A person commits an offense if the person imports sheep into this state in violation of Subchapter D of this chapter.

(b) An offense under this section is a Class B misdemeanor for each head of sheep imported in violation of Subchapter D of this chapter.

(c) A person commits a separate offense for each county into which or through which the sheep are moved.

(d) Venue for prosecution of an offense under this section is in any county into which or through which the sheep are moved.

Acts 1981, 67th Leg., p. 1427, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 50, eff. Sept. 1, 1989.

CHAPTER 165. CONTROL OF DISEASES OF SWINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 165.001. DEFINITION. In this chapter, "commission" means the Texas Animal Health Commission.

Acts 1981, 67th Leg., p. 1428, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 165.002. OWNER TREATMENT. Except as otherwise provided by law, a person may vaccinate, inoculate, or treat hogs owned by that person with hog cholera virus or serum or with another remedy, and a county demonstration agent may vaccinate, inoculate, or treat any hogs in the county in which the agent is employed with hog cholera virus or serum or with another remedy.

Acts 1981, 67th Leg., p. 1428, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 165.003. SALE OR DISTRIBUTION OF UNATTENUATED HOG CHOLERA VIRUS. (a) A person may not sell, offer for sale, barter, exchange, or give away unattenuated hog cholera virus.

(b) This section does not prohibit:

(1) acquisition, propagation, manufacture, or use of unattenuated hog cholera virus by, and on the licensed premises of, a firm operating under a United States veterinary license issued by the secretary of agriculture of the United States;

(2) manufacture of unattenuated hog cholera virus by a firm operating under a United States veterinary license for the sale or distribution in states in which use of attenuated hog cholera virus is permitted; or

(3) keeping vaccine on hand for purely experimental or research activities by a recognized college, university, school, or laboratory engaged in research activities.

(c) In this section, "unattenuated hog cholera virus" means a hog cholera virus that has not been modified or inactivated.

Acts 1981, 67th Leg., p. 1428, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER B. COOPERATIVE PROGRAM FOR DISEASE ERADICATION

Sec. 165.021. COOPERATION WITH U.S. DEPARTMENT OF AGRICULTURE. The commission may cooperate with the United States Department of Agriculture in the eradication of vesicular exanthema, foot and mouth disease of swine, hog cholera, and other diseases of swine.

Acts 1981, 67th Leg., p. 1429, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 165.022. METHOD OF DISEASE ERADICATION. Following notice and public hearing, the commission shall adopt rules for the enforcement of this subchapter, including rules providing for the manner, method, and system of eradicating swine diseases. The rules may not exceed the rules relating to minimum standards for cooperative programs adopted by the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Acts 1981, 67th Leg., p. 1429, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 165.023. USE OF BIOLOGICS. The commission shall adopt rules governing the use of biologics as a protection against dissemination of communicable swine diseases.

Acts 1981, 67th Leg., p. 1429, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 165.026. FEEDING GARBAGE TO SWINE. (a) A person may not feed restricted garbage to swine or provide restricted garbage to any person for the purpose of feeding swine, except that a facility operated by the Texas Department of Criminal Justice may feed restricted garbage to swine if the garbage is properly treated in accordance with applicable federal requirements.

(b) A person may feed unrestricted garbage to swine only if the person first registers with and secures a permit from the commission.

(c) The commission may adopt rules for registration under this section, including rules providing for registration issuance, revocation, and renewal, disease tests, inspections, bookkeeping, and appropriate handling and treatment of unrestricted garbage. Registration with the commission shall be made on forms prescribed by the commission, and the commission shall furnish those forms on request. The commission may impose a registration fee not to exceed $25 a year.

(d) The commission or the executive director of the commission may issue an emergency administrative order to suspend a registration under this section or require the immediate quarantine and closure of a garbage feeding facility if the commission or the executive director determines that the practice presents a danger to public health or the livestock industry, including any danger related to an insect infestation or the transmission of a disease. An order must expire not later than the end of the second month after the effective date of the order.

(e) The commission or the commissioner may issue an order prohibiting the feeding of restricted garbage to swine in all or part of the state if the commission or the commissioner determines that the practice presents a danger to public health or the livestock industry, including any danger related to an insect infestation or the transmission of a disease.

(f) This section does not apply to an individual who feeds unrestricted garbage from the individual's own household, farm, or ranch to swine owned by the individual.

(g) The commission, in cooperation with the department and any other appropriate state agencies and political subdivisions, shall:

(1) attempt to inform each supplier of restricted garbage

and each individual feeding garbage to swine of the provisions of this section;

(2) assist garbage feeding facilities and individuals feeding garbage to swine in identifying a source for obtaining unrestricted garbage; and

(3) adopt measures designed to ensure compliance with this section.

(h) In this section:

(1) "Restricted garbage" includes:

(A) the animal refuse matter and the putrescible animal waste resulting from handling, preparing, cooking, or consuming food containing all or part of an animal carcass;

(B) the animal waste material by-products or commingled animal and vegetable waste material by-products of a restaurant, kitchen, cookery, or slaughterhouse; and

(C) refuse accumulations of animal matter or commingled animal and vegetable matter, liquid or otherwise.

(2) "Unrestricted garbage" includes the vegetable, fruit, dairy, or baked goods refuse matter and vegetable waste and refuse accumulations resulting from handling, preparing, cooking, or consuming food containing only vegetable matter, liquid or otherwise.

Acts 1981, 67th Leg., p. 1430, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1999, 76th Leg., ch. 764, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1207, Sec. 1, eff. Sept. 1, 2001.

Sec. 165.027. ENTRY POWER. (a) A representative of the commission, including a member of the commission, is entitled to enter the premises of any person for the purpose of inspecting swine or the heating or cooking equipment required by this subchapter or for the purpose of performing another duty under this subchapter.

(b) A person may not refuse to permit an inspection authorized by this subchapter.

Acts 1981, 67th Leg., p. 1430, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER C. PENALTIES

Sec. 165.041. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of Subchapter B of this

chapter or a rule adopted under that subchapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each day of violation.

Acts 1981, 67th Leg., p. 1430, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 51, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 20, eff. Sept. 1, 1993.

Sec. 165.042. SALE OF UNATTENUATED HOG CHOLERA VIRUS. (a) A person commits an offense if the person violates Section 165.003 of this code.

(b) An offense under this section is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1431, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 52, eff. Sept. 1, 1989.

CHAPTER 167. TICK ERADICATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 167.001. DEFINITIONS. In this chapter:

(1) "Animal" means any domestic, free-range, or wild animal capable of hosting or transporting ticks capable of carrying Babesia, including:

(A) livestock;

(B) zebras, bison, and giraffes; and

(C) deer, elk, and other cervid species.

(1-a) "Commission" means the Texas Animal Health Commission.

(2) "Enclosure" includes a pasture, pen, or lot.

(3) "Inspector" means an inspector of the commission, including a local inspector, a county or district supervising inspector, and the chief inspector.

(4) "Livestock" means cattle, horses, mules, jacks, or jennets.

(5) "Peace officer" includes a sheriff, constable, or other

peace officer authorized to perform services in the county in which services are required.

(6) "Tick" means any tick capable of carrying Babesia, otherwise known as "fever."

(7) "Exotic livestock" has the meaning assigned by Section 161.001(a)(3) of this code.

(8) "Treatment" means a procedure or management practice used on an animal to prevent the infestation of, control, or eradicate ticks capable of carrying Babesia.

Acts 1981, 67th Leg., p. 1436, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 637, Sec. 7, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 836, Sec. 53, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 1, eff. September 1, 2013.

Sec. 167.002. CARETAKER OF ANIMAL. A person is subject to this chapter as the caretaker of an animal if the person:

(1) is the owner, part owner, lessee, occupant, or caretaker of land or premises, and controls that land or those premises, on which the animal is located;

(2) is the parent of a minor child who owns an interest in the animal, unless a person other than the parent is the legal guardian of the minor child's estate; or

(3) is the administrator, executor, or guardian of an estate that owns the animal, or owns land on which the animal is located, and controls the estate by reason of the administration or guardianship.

Acts 1981, 67th Leg., p. 1436, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 167.003. GENERAL POWERS AND DUTIES OF COMMISSION. (a) In accordance with this chapter, the commission shall eradicate all ticks capable of carrying Babesia in this state and shall protect all land, premises, and animals in this state from those ticks and exposure to those ticks.

(b) In carrying out this chapter, the commission may:

(1) adopt necessary rules;

(2) employ necessary personnel, including a chief inspector, chief clerk, stenographers, and clerks, and assign the personnel to perform duties authorized by this chapter or incidental to its enforcement;

(3) assist and cooperate with county officials; and

(4) enter into cooperative agreements with other state agencies or agencies of the federal government.

(c) The commission by rule may provide for the manner and method of treating saddle stock and stock used for gentle work and for the handling and certifying of that stock for movement, but unless the commission so provides, the stock is subject to this chapter as other animals.

Acts 1981, 67th Leg., p. 1436, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 2, eff. September 1, 2013.

Sec. 167.004. CLASSIFICATION OF ANIMALS OR PREMISES AS INFESTED, EXPOSED, OR FREE FROM EXPOSURE. (a) If a tick is found on an animal, the following are classified as tick infested:

(1) each animal that is in the same herd or is then or thereafter on the same range or in the same enclosure as the animal on which the tick is found; and

(2) the range or enclosure in or on which the animal is located.

(b) The commission by rule shall define what animals and premises are to be classified as exposed to ticks. The commission shall classify as exposed to ticks animals that have been on land or in an enclosure that the commission determines to be tick infested or exposed to ticks or to have been tick infested or exposed to ticks before or after the removal of the animals, unless the commission determines that the infestation or exposure occurred after the animals were removed and that the animals did not become infested or exposed before removal.

(c) Animals, land, and premises classified as tick infested or exposed to ticks retain that classification until the classification is changed by the commission in accordance with this chapter.

(d) Animals, land, and premises in the tick eradication area may not be considered to be free from exposure to ticks unless:

(1) the commission has officially classified the animals or premises as free from exposure and filed a copy of the order making that classification in the office of the supervising inspector of the county in which the animals or premises are located; or

(2) the supervising inspector of the county in which the animals or premises are located, under the authority of the commission, has classified the animals or premises in writing as free from exposure and filed the written classification in the supervising inspector's office.

Acts 1981, 67th Leg., p. 1437, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 3, eff. September 1, 2013.

Sec. 167.005. ERADICATION, FREE, AND INACTIVE QUARANTINE AREAS. (a) The tick eradication area is composed of counties and parts of counties designated for tick eradication under Section 167.006 of this code.

(b) The free area and the inactive quarantine area are composed of counties and parts of counties designated by the commission to be part of the applicable area.

(c) The commission may transfer a county or part of a county from the tick eradication area, the free area, or the inactive quarantine area to another type of area as the commission considers advisable or necessary.

Acts 1981, 67th Leg., p. 1437, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 167.006. DESIGNATION OF TICK ERADICATION AREA. (a) The commission may designate for tick eradication any county or part of a county that the commission determines may contain ticks.

(b) The commission shall give notice that a county or part of a county is designated for tick eradication by:

(1) publishing a brief notice of the designation in a newspaper published in that county or that part of the county, as applicable; or

(2) posting a brief notice of the designation at the courthouse door of the county.

(c) The notice must prescribe a date on which the designation is to take effect and must be published or posted before the 10th day preceding that date. The county affected by the designation shall pay the expenses of giving notice.

(d) The designation of a county or part of a county for tick eradication takes effect on:

(1) the date specified in the notice, if the notice is published or posted within the time prescribed by Subsection (c) of this section; or

(2) the 10th day following the day on which notice is published or posted, if the notice is not published or posted within the time prescribed by that subsection.

Acts 1981, 67th Leg., p. 1437, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 167.007. TICK ERADICATION IN FREE AREA. (a) The commission may conduct tick eradication in the free area and may establish quarantines and require the treatment of animals in the free area as provided by this chapter. The commission shall designate in writing the land or premises in the free area in which tick eradication is to be conducted.

(b) An owner or caretaker of animals in the free area and the commissioners court of a county all or part of which is located in the free area shall cooperate with the commission in the manner provided by this chapter for tick eradication in the tick eradication area.

Acts 1981, 67th Leg., p. 1438, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 4, eff. September 1, 2013.

Sec. 167.008. INSPECTIONS. The commission may order the owner, part owner, or caretaker of animals to gather the animals for inspection at a time and place prescribed in the order of the commission. The commission shall serve written notice of the order not later than the 12th day before the day of inspection. A person on whom an order is served is entitled to request and obtain a hearing in the manner provided by this chapter for hearings on orders to treat animals.

Acts 1981, 67th Leg., p. 1438, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 4, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 4, eff. September 1, 2013.

SUBCHAPTER B. QUARANTINES; REGULATION OF MOVEMENT OF ANIMALS AND COMMODITIES

Sec. 167.021. GENERAL QUARANTINE POWER. (a) The commission may establish quarantines on land, premises, and animals as necessary for tick eradication.

(b) The commission in writing may release a quarantine established under this chapter if the commission considers it necessary or advisable to do so.

Acts 1981, 67th Leg., p. 1438, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 5, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 5, eff. September 1, 2013.

Sec. 167.022. QUARANTINE OF TICK ERADICATION AREA. (a) The order designating a county or part of a county for tick eradication shall contain a provision quarantining that county or part of a county.

(b) A quarantine under this section has the effect of

quarantining all land, premises, and animals in the area quarantined, regardless of whether any person's land, premises, or animals are specifically described in the quarantine order.

Acts 1981, 67th Leg., p. 1438, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 6, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 6, eff. September 1, 2013.

Sec. 167.023. QUARANTINE OF FREE AREA. (a) The commission by written order may establish a quarantine in the free area if necessary for the purpose of regulating the handling of animals and eradicating ticks or exposure to ticks in the free area or for the purpose of preventing the spread of tick infestation into the free area.

(b) The order of the commission establishing a quarantine in the free area shall designate the land or premises to be quarantined.

(c) The commission shall give notice of a quarantine established in the free area by:

(1) delivering notice to each owner or caretaker of animals in the area to be quarantined or to each owner or caretaker of land or premises in the area on which animals are located;

(2) posting written notice at the courthouse door of each county in which the area to be quarantined is located; or

(3) publishing notice in a newspaper published in each county in which the area to be quarantined is located.

Acts 1981, 67th Leg., p. 1438, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 7, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 7, eff. September 1, 2013.

Sec. 167.024. MOVEMENT IN OR FROM QUARANTINED AREA. (a) Unless a person first obtains a permit or a certificate from an authorized inspector, the person may not move animals in a

quarantined area:

(1) from land owned, leased, or occupied by one person into or through any other land owned, leased, or occupied by another person; or

(2) onto any open range, public street, public road, or thoroughfare.

(b) Unless the person first obtains a permit or a certificate from an authorized inspector, the owner or caretaker of animals in a quarantined area may not move the animals, or permit the animals to be moved, from an enclosure owned, leased, or occupied by that person, from any open range, street, road, or thoroughfare, or from any land that the person does not own or control, into any other enclosure or other land owned, cared for, or controlled by that person, if:

(1) the animals are subject to treatment under this chapter and the land or enclosure to which the animals are moved:

(A) is classified in the records of the county supervising inspector as being free from ticks; or

(B) has been released from quarantine by the commission; or

(2) the animals are subject to treatment but are not being treated under this chapter in the conduct of regular systematic tick eradication by the commission and the land or enclosure to which the animals are moved is owned or controlled by that person and:

(A) tick eradication work is being conducted there; or

(B) the land or enclosure is vacated under the direction of the commission for the purpose of tick eradication.

(c) The owner or caretaker of animals located in a quarantined area may move animals, or permit animals to be moved, to and from treatment facilities for the purpose of treating the animals on a regular treatment date at the treatment facility to which the animals are to be moved or on another date designated by the inspector in charge of the treatment facility. The movement of animals under this subsection must be in accordance with the rules of the commission. Any other movement is considered to be in violation of the quarantine.

(d) In this section, "other land" means land that is separated from the land from which movement is made by a fence, dividing line, or the land of another person.

Acts 1981, 67th Leg., p. 1439, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 8, eff. September 1, 2013.

Sec. 167.025. MOVEMENT IN OR FROM INACTIVE QUARANTINED AREA. A person may not move animals or permit animals to be moved from or within the inactive quarantined area except in accordance with the rules of the commission.

Acts 1981, 67th Leg., p. 1440, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 9, eff. September 1, 2013.

Sec. 167.026. MOVEMENT INTO THIS STATE FROM QUARANTINED AREA. (a) A person may not move animals, or permit animals of which the person is the owner, part owner, or caretaker to be moved, into this state from an area in another state, territory, or country that is under state or federal quarantine for tick infestation or exposure unless the animals are accompanied by a certificate from an inspector of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

(b) A person may not move goats, hogs, sheep, exotic livestock, or circus animals into this state from an area of another state, territory, or country that is under state or federal quarantine for tick infestation unless the animals:

(1) have been treated free from infestation or exposure; and

(2) are certified as having been so treated by an inspector of the commission or of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

(c) A person may not move hay, straw, grass, packing straw, pine straw, corn shucks, weeds, plants, litter, manure, dirt, posts,

sand, gravel, caliche, or animal by-products into this state for any purpose from an area of another state, territory, or country that is under state or federal quarantine for tick infestation unless the articles:

(1) have been treated in accordance with the requirements of the commission or the Animal and Plant Health Inspection Service, United States Department of Agriculture; and

(2) are certified as having been so treated by an inspector of the commission or the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Acts 1981, 67th Leg., p. 1440, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 836, Sec. 54, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 10, eff. September 1, 2013.

Sec. 167.027. PERMIT OR CERTIFICATE TO ACCOMPANY MOVEMENT. (a) A certificate or permit required for movement of animals within or into this state must be in the possession of the person in charge of the movement or the conveyance from the point of origin to the point of destination. If the movement is by a transportation company, including a railway or express company, the certificate must be attached to the shipping papers accompanying the movement from the point of origin to the point of destination. On demand of an inspector, the person in charge of the movement or conveyance shall exhibit the certificate or permit.

(b) A certificate required for movement of articles listed in Section 167.026(c) must accompany the movement to the final destination in this state or so long as the articles are moving through this state.

Acts 1981, 67th Leg., p. 1440, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 836, Sec. 55, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 11, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 11, eff. September 1, 2013.

Sec. 167.028. STATEMENT OF POSSESSION AND DESTINATION. On request of an inspector, the owner, part owner, or caretaker, or a person accompanying and connected with a shipment, of animals that are being moved in this state or have been moved in this state within 60 days preceding the request, shall make a written statement of:

(1) the name of the owner or the person controlling the land from which the shipment originated and the county in which that land is located;

(2) the county and the particular place in that county to which the shipment is or was destined;

(3) the name and address of the person from whom the animals were obtained, if the animals were obtained in the 30 days preceding the request, or, if the animals were not obtained during the 30 days preceding the request, a statement of that fact; and

(4) the territory through which the shipment passed since leaving the point of origin and through which the shipment is intended to pass before reaching the point of destination.

Acts 1981, 67th Leg., p. 1440, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 12, eff. September 1, 2013.

Sec. 167.029. CONDITIONS, MANNER, AND METHOD OF MOVING AND HANDLING. (a) The commission by rule shall provide the conditions for and the manner and method of handling and moving animals:

(1) into, in, and from the tick eradication area;

(2) into, in, and from quarantined land or premises in the free area;

(3) into the released part of the free area; and

(4) into, in, and from the inactive quarantined area.

(b) Animals must be certified as being free from ticks and

exposure to ticks, and must be moved to the destination without exposure, if the animals are to be moved:

(1) into the free area;

(2) from one county to another in the tick eradication area; or

(3) within a county to land or premises that are classified by the official records of the supervising inspector of the county as being free from ticks and exposure to ticks.

(c) The commission may adopt rules relating to testing, immunizing, treating, certifying, or marking or branding animals moving into this state from another state or country.

Acts 1981, 67th Leg., p. 1441, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 12, eff. September 1, 2013.

Sec. 167.030. DISINFECTION OF CONVEYANCE. (a) A person, including a railway or transportation company, who operates a conveyance into which animals are loaded shall clean and disinfect each car or other conveyance after removal of the animals unless the animals are clean and free from ticks or exposure to ticks.

(b) The commission shall adopt rules relating to the cleaning and disinfecting of conveyances.

Acts 1981, 67th Leg., p. 1441, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 13, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 13, eff. September 1, 2013.

Sec. 167.031. USE OF SAND AS BEDDING IN CONVEYANCE. The commission may establish quarantines and restrict the use of sand as bedding in an animal conveyance except for sand from known tick-free sand pits.

Acts 1981, 67th Leg., p. 1441, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 14, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 14, eff. September 1, 2013.

Sec. 167.032. MOVEMENT OF COMMODITIES. The commission may establish quarantines and restrict the movement from quarantined areas of hay, hides, carcasses, or other commodities that are capable of carrying ticks.

Acts 1981, 67th Leg., p. 1441, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 167.033. HANDLING AND REMOVAL OF REFUSE OR DEAD OR INJURED ANIMALS. The commission may establish quarantines and regulate the removal and handling of refuse matter from quarantined stockyards, quarantined stock pens, and other quarantined places and may establish quarantines and regulate the handling or removal of animals that die or are injured in transit.

Acts 1981, 67th Leg., p. 1442, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 14, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 14, eff. September 1, 2013.

SUBCHAPTER C. TREATMENT

Sec. 167.051. ANIMALS SUBJECT TO TREATMENT. (a) Animals located in the tick eradication area are subject to treatment if the animals:

(1) are infested with ticks;

(2) were exposed to ticks within the nine months preceding an order to treat; or

(3) are on premises described in an order to treat during the time that the order is in effect and the person to whom the order is issued is the owner, part owner, or caretaker of the animals.

(b) Animals located in the free area are subject to treatment if:

(1) the animals are infested with ticks;

(2) the animals were exposed to ticks within the nine months preceding an order to treat;

(3) the animals are on premises described in an order to treat during the time the order is in effect and the person to whom the order is issued is the owner, part owner, or caretaker of the animals; or

(4) the commission determines that treatment is necessary to ensure that the animals are entirely free from infestation.

(c) The commission may require the treatment of animals that are located in the free area and are tick infested or have been exposed to ticks regardless of whether the animals or the area in which the animals are located is under quarantine.

Acts 1981, 67th Leg., p. 1442, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 16, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 16, eff. September 1, 2013.

Sec. 167.052. ORDER TO TREAT. (a) The commission may order the owner, part owner, or caretaker of animals to treat the animals in accordance with the directions of the commission. The order must be dated, in writing, and signed or stamped with the signature of the commission or the presiding officer of the commission.

(b) An order to treat must:

(1) state the period of time covered by the order;

(2) describe the premises on which the animals to be treated are located;

(3) state that the person to whom the order is directed shall treat all animals of which the person is the owner, part owner, or caretaker and which are located on those premises during that time;

(4) state that the treatment must be done under the supervision of an inspector;

(5) designate the method by which the animals are to be

treated;

(6) state the dates on which the animals are to be treated; and

(7) state that if the person does not treat the animals on those dates, the treatment will be done at the person's expense by a peace officer acting in accordance with this chapter.

(c) The order is not required to describe the premises on which the animals are located by field notes or metes and bounds, but must provide a reasonable description sufficient to inform the person to whom it is directed of the premises or land covered by the order.

(d) An order may require the treatment of the animals on as many dates as the commission considers necessary for eradicating the infestation or exposure of the animals or the premises on which the animals are located.

(e) An order to treat must be delivered to the person to whom it is directed not later than the 12th day before the date specified in the order for the first treatment, not including the date of delivery or the date of the first treatment.

(f) A person to whom an order to treat is directed shall comply with the order and treat the animals in accordance with the directions of the commission. If the order is not delivered within the time provided by Subsection (e), the person receiving the order shall begin treatment on the first treatment date that is more than 12 days after the date of receipt of the order and shall continue treatment on subsequent dates as specified in the order.

(g) If the animals or the premises are not freed from ticks or exposure to ticks before an order to treat expires, the commission may issue additional orders regardless of whether the animals were exposed to ticks in the nine months preceding the date of the subsequent order.

Acts 1981, 67th Leg., p. 1442, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 32, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 16, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 16, eff. September 1, 2013.

Sec. 167.053. HEARING. (a) A person is entitled to request and obtain a hearing for the purpose of protesting an order to treat by filing a sworn application with the supervising inspector of the county in which the animals are located. The application must be filed not later than the 10th day after the day on which the order was received.

(b) Following a hearing, the commission shall transmit its written decision to the supervising inspector, who shall transmit it to the protesting person by delivering it in person or by mailing it by registered mail to the address shown in the hearing application. If the commission overrules the protest, the person to whom the order was directed shall comply with the order.

(c) If the commission's decision is delivered in person, a person whose protest is overruled shall begin treatment of the animals on the first treatment date in the order that is more than two days after the day on which the decision is received. If the decision is delivered by mail, the person shall begin treatment on the first treatment date in the order that is more than four days after the day on which the decision was deposited in the mail.

Acts 1981, 67th Leg., p. 1443, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 17, eff. September 1, 2013.

Sec. 167.054. EXCUSE FROM COMPLIANCE WITH ORDER. The supervising inspector of a county for good cause may excuse a person from complying with an order to treat, but shall be held responsible for excusing compliance without good cause.

Acts 1981, 67th Leg., p. 1443, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 18, eff. September 1, 2013.

Sec. 167.055. PERSONS RESPONSIBLE FOR TREATMENT AND ASSISTANCE. (a) A person who owns any interest in animals subject to treatment or who is the caretaker of the animals is responsible for the treatment of the animals under this chapter and is subject to prosecution for failure to treat the animals.

(b) A husband and wife are jointly and severally liable for the treatment of animals subject to treatment that belong to their community estate. Each spouse is responsible for the treatment of animals belonging to that person's separate estate, except that a spouse who is the caretaker of animals owned by the other spouse is responsible for the treatment of the animals.

(c) A person responsible for the treatment of animals subject to treatment shall furnish all necessary labor, at the person's own expense, for gathering the animals, driving the animals to the treatment facility, treating the animals, and returning the animals to the person's premises after treatment.

Acts 1981, 67th Leg., p. 1443, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 18, eff. September 1, 2013.

Sec. 167.056. MANNER OF TREATMENT. If the commission requires animals to be treated, the animals shall be treated in the manner prescribed by the commission.

Acts 1981, 67th Leg., p. 1444, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 18, eff. September 1, 2013.

Sec. 167.057. TREATMENT CHEMICALS. (a) The commission shall prescribe by rule the official materials in which animals are to be treated under this chapter. A person may not treat animals for purposes of this chapter in a material other than an official

material prescribed by the commission.

(b) The state, an agency of the state, or an agency of the government of the United States shall, and a county may, furnish the official materials for the treatment of animals under this chapter.

Acts 1981, 67th Leg., p. 1444, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 18, eff. September 1, 2013.

Sec. 167.058. TREATMENT INTERVALS. A person to whom an order to treat is directed shall treat the animals on the dates specified in the order, but the order of the commission must provide an interval of at least 13 days, not including any part of a treatment date, between the days on which it directs the animals to be treated. The order of the commission may provide an interval longer than 13 days.

Acts 1981, 67th Leg., p. 1444, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 18, eff. September 1, 2013.

Sec. 167.059. TREATMENT FACILITIES. (a) The commissioners court of each county, including a county in the free area, in all or part of which the commission conducts tick eradication shall cooperate with the commission and shall furnish facilities necessary to the treatment of animals in that county. The commissioners court shall furnish dipping vats, pens, chutes, and other necessary facilities in the number, at the locations, and of the type specified by the commission. In addition, the county, at its expense, shall maintain the facilities and repair or remodel them as necessary, shall provide the water for filling the vats, and shall clean and refill the vats as necessary.

(b) For the purpose of constructing, purchasing, or leasing

treatment facilities, and for the purpose of providing necessary land, labor, or materials, a commissioners court may appropriate money out of the general fund of the county or may incur indebtedness by the issuance of warrants. A warrant issued may not draw interest at a rate of more than six percent per year and may not have a term of more than 20 years. The commissioners court may levy taxes to pay interest on warrants and may establish a sinking fund for the payment of warrants.

(c) For the purpose of acquiring necessary land for the construction or maintenance of treatment facilities, for the purpose of acquiring treatment facilities that have already been constructed, or for the purpose of acquiring land necessary for ingress and egress to and from those facilities, a commissioners court has the power of eminent domain. The commissioners court shall exercise the power of eminent domain in the manner provided by law for acquiring land for the building and maintenance of public buildings, except that the court shall institute and prosecute condemnation proceedings on written request from the presiding officer of the commission. The request from the commission shall designate:

(1) the land to be condemned and its location;

(2) the name of the owner of the land to be condemned; and

(3) the easement to be acquired for ingress and egress.

(d) In acquiring land or facilities by eminent domain, the commissioners court may retain the property for permanent use by making appropriate compensation or may acquire the property for temporary use by making proper compensation for the period of time determined necessary by the commissioners court.

Acts 1981, 67th Leg., p. 1444, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 33, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 20, eff. September 1, 2013.

Sec. 167.060. TREATMENT REQUIRED FOR MOVEMENT FROM QUARANTINED AREA. (a) An inspector may not issue a certificate or permit for the movement of animals from a quarantined enclosure unless the owner or caretaker of the animals:

(1) is cooperating with the commission in the regular systematic treatment of the animals listed in Subsection (b); and

(2) has treated those animals on the last two treatment dates that were prescribed for the area in which the animals are located and that preceded the date of movement.

(b) In order to be issued the permit or certificate, the owner or caretaker must cooperate with the commission in the regular systematic treatment of animals of which the person is the owner or caretaker and which:

(1) are located in the enclosure from which the animals are to be moved;

(2) are located in quarantined enclosures that connect with the enclosure from which the animals are to be moved, including an enclosure that:

(A) connects with an enclosure that connects with the enclosure from which the animals are to be moved; or

(B) is on the opposite side of a lane or road from the enclosure from which the animals are to be moved; or

(3) are located on the quarantined open range that connects with any of the enclosures under Subdivision (1) or (2).

(c) If ticks are found on any of the animals submitted for movement, before the certificate or permit is issued, each head of the animals must be treated as prescribed by commission rules.

(d) The commission may waive the enforcement of this section for good cause. A waiver of the commission must be in writing.

Acts 1981, 67th Leg., p. 1445, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 22, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 22, eff. September 1, 2013.

SUBCHAPTER D. STOCKYARD REGULATION

Sec. 167.081. DESIGNATION OF FACILITY TO HANDLE CERTIFIED LIVESTOCK. (a) The commission may designate a stockyard that is in the tick eradication area or in the free area and is open to the public for yarding, marketing, and selling livestock as a facility to handle intrastate movements of livestock certified by an inspector to be free from ticks or exposure to ticks. A stockyard so designated shall provide tick-free facilities for the handling of that livestock in accordance with this subchapter.

(b) A designation under this section is effective for 24 months following the day on which notice is served, and the commission may redesignate a facility for the purpose of this section.

Acts 1981, 67th Leg., p. 1445, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 167.082. NOTICE AND HEARING. (a) The commission shall give written notice of a designation under this subchapter to the stockyard company or to the owner, operator, or other person in control of the stockyard.

(b) A person to whom a notice is directed may request a hearing for the purpose of protesting the designation in the manner provided by Section 167.053 for requesting a hearing on an order to treat. The commission shall grant the hearing and give notice of its decision in the manner provided by that section.

(c) A person whose protest is overruled shall complete the work required to provide tick-free facilities not later than the 60th day following the day on which the person receives notice of the commission's decision.

Acts 1981, 67th Leg., p. 1446, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 23, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 23, eff. September 1, 2013.

Sec. 167.083. MAINTENANCE OF TICK-FREE FACILITIES. (a) A person who owns or operates and is in control of a stockyard designated under this subchapter shall maintain clean and tick-free facilities, including pens, alleys, and chutes, so that livestock certified by an inspector to be free from ticks or exposure to ticks may be received, yarded, weighed, and sold for intrastate purposes without being subject to exposure to ticks.

(b) In accordance with Subsection (a) of this section, the owner or operator shall maintain tick-free scales, entrances, exits, pens, and territory immediately surrounding the pens.

(c) The stockyard company, owner or operator, or other person in control of a stockyard may not discriminate between interstate and intrastate handling of livestock.

Acts 1981, 67th Leg., p. 1446, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER E. ENFORCEMENT

Sec. 167.101. INSPECTORS. (a) The commissioners court of a county in which the commission conducts tick eradication may nominate the number of local inspectors found by the commission to be necessary for tick eradication in that county. The commission shall appoint those persons nominated unless, following appointment of local inspectors, the commission finds that the county is trying to retard tick eradication or is nominating persons who are incompetent or negligent in the performance of duty. In that case, the commission may ignore the nominations of the county.

(b) If a commissioners court fails or refuses to nominate persons as local inspectors, the commission shall appoint local inspectors without nomination.

(c) Local inspectors work under the direction and orders of the commission and are subject to discharge by the commission. The commission shall fix and the state shall pay the salaries of local inspectors, but a county may pay the salary and traveling expenses of a local inspector.

(d) The commission may employ county and district supervising inspectors without nomination by the commissioners courts.

(e) Only an inspector appointed for the purpose may conduct tick eradication or issue permits and certificates certifying animals to be free from ticks or exposure to ticks. An inspector shall issue

those permits and certificates in accordance with the rules of the commission.

Acts 1981, 67th Leg., p. 1446, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 24, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 24, eff. September 1, 2013.

Sec. 167.102. ENTRY POWER. (a) A commissioner or an inspector, and assistants, may enter public or private property, without a warrant, for the exercise of an authority or performance of a duty under this chapter.

(b) If an inspector or commissioner desires to be accompanied by a peace officer, the inspector or commissioner shall apply for a search warrant to a magistrate of the county in which the property is located. The magistrate shall issue the search warrant on a showing of probable cause by oath or affirmation.

(c) The search warrant shall describe the place to be entered in a reasonable manner that will enable the person in charge of the property to identify the property described, but the warrant is not required to describe the property by field notes or by metes and bounds. If the applicant for the warrant seeks to enter the property to determine whether animals are on the property, the application for the warrant shall state that. If the warrant is obtained for the purpose of seizing or treating animals, the application and the warrant shall describe the animals and give the approximate number of animals. If any of that information is unknown to the applicant, the application and warrant shall state that the information is unknown.

(d) A search warrant issued under this section authorizes the person to whom it is issued to enter the property for the exercise of an authority or performance of a duty under this chapter and to be accompanied by a peace officer and assistants. In addition, the warrant authorizes the peace officer and the assistants to perform any duty authorized by this chapter.

(e) A search warrant issued under this section permits entry and reentry for the purposes of this section for a period of 60 days beginning on the day on which it is issued. After that period,

additional search warrants may be issued as often as necessary.

Acts 1981, 67th Leg., p. 1447, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 25, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 25, eff. September 1, 2013.

Sec. 167.103. TREATMENT OF ANIMALS BY PEACE OFFICER ON REQUEST OF INSPECTOR. (a) If a person responsible for treating animals fails to treat the animals at the time and place directed in the order or, prior to a treatment date in the order, states that he or she does not intend to treat the animals, the inspector in charge of tick eradication in that county shall notify a peace officer.

(b) The peace officer shall deputize a sufficient number of assistants, to be designated by the supervising inspector of the county, shall enter the property on which the animals are located, and shall gather and treat the animals under the supervision of an inspector and in accordance with the directions of the commission.

(c) The peace officer shall continue to treat the animals on each treatment date specified in the order until the person responsible for treatment begins and continues the treatment in accordance with that order.

Acts 1981, 67th Leg., p. 1447, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 26, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 26, eff. September 1, 2013.

Sec. 167.104. SEIZURE AND DISPOSAL OF ANIMALS RUNNING AT LARGE. (a) An inspector may request a peace officer to seize animals if:

(1) the inspector determines the animals to be running at large or on the open range of a county or part of a county in which the commission is conducting tick eradication under this chapter; and

(2) the inspector is unable to locate the owner or caretaker of the animals.

(b) The peace officer may deputize assistants, shall seize the animals, and shall treat the animals under the supervision of an inspector. The officer shall impound the animals at a place designated by the inspector or otherwise dispose of the animals as necessary for the purpose of tick eradication.

Acts 1981, 67th Leg., p. 1448, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 26, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 26, eff. September 1, 2013.

Sec. 167.105. SEIZURE AND DISPOSAL OF ANIMALS MOVED IN VIOLATION OF QUARANTINE. (a) An inspector who discovers animals that are being or have been moved in violation of a quarantine may request a peace officer to seize the animals and:

(1) impound the animals at the expense of the owner; or

(2) if practicable, return the animals at the expense of the owner to the point of origin.

(b) In addition to other expenses, the owner of the seized animals shall pay the officer a fee of $2 and the cost of feeding, watering, and holding the animals.

Acts 1981, 67th Leg., p. 1448, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 26, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 26, eff. September 1, 2013.

Sec. 167.106. INJUNCTION; MANDAMUS. (a) The commission or a resident of this state may sue for an injunction to compel compliance with a provision of this chapter or to restrain a threatened violation of a provision of this chapter.

(b) A resident of this state may sue for mandamus against a commissioners court to compel the compliance of that court with the duty of the commissioners court under this chapter.

(c) The commission or a resident of a county or part of a

county in which tick eradication is being conducted may sue for permanent or temporary relief to compel a person who is an owner, part owner, or caretaker of animals to treat the animals in accordance with this chapter if the person has failed or refused to treat the animals or has threatened to fail or refuse to treat the animals. If the court finds that the defendant has been served with an order of the commission to treat the animals, that the animals are subject to treatment, and that the material allegations of the plaintiff's petition are true, the court shall enter an order commanding the defendant to treat the animals in accordance with the directions of the commission at the time and place designated in the order of the commission or in the order of the court. If the defendant fails to comply with the order of the court, the court may hold the defendant in contempt and punish the defendant accordingly and shall order a peace officer to deputize assistants and treat the animals in accordance with the order of the court. The expense of treating the animals and employing the peace officer and assistants shall be taxed against the defendant as a cost of suit.

(d) A court may hear and determine a suit under this section in term or in vacation. Notice of the suit shall be given to the defendant as the court determines justice requires.

Acts 1981, 67th Leg., p. 1448, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 27, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 27, eff. September 1, 2013.

Sec. 167.107. SALE OF ANIMALS TREATED OR SEIZED BY PEACE OFFICER. (a) A peace officer who gathers and treats or who seizes and impounds or disposes of animals under Section 167.103, 167.104, or 167.105 is entitled to retain and sell the animals for the purpose of securing payment for the expenses of handling, including the expenses of holding, feeding, and watering the animals.

(b) Not later than the 60th day after the day on which animals are treated or seized, the peace officer may sell at public sale to the highest bidder a number of the animals sufficient to cover the secured expenses. The officer shall conduct the sale at the

courthouse door of the county in which the animals are located and shall post notice of the sale at that courthouse door at least five days before the day of the sale.

(c) If any proceeds of the sale remain after deducting the amount to which the peace officer is entitled, the peace officer shall pay those proceeds to the county treasurer subject to the order of the owner of the animals.

(d) A peace officer who treats animals under Section 167.103 is entitled to act under this section to secure the expenses of each day on which the animals are treated.

Acts 1981, 67th Leg., p. 1449, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 28, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 28, eff. September 1, 2013.

Sec. 167.108. LIENS. (a) A peace officer who gathers and treats or who seizes and impounds or disposes of animals under Section 167.103, 167.104, or 167.105 has a lien on the animals for the purpose of securing payment of the officer's fees and the expenses of handling the animals, including the expenses of holding, feeding, and watering the animals and the expenses of paying assistants. Instead of retaining and selling the animals under Section 167.107, the officer may perfect and foreclose a lien granted by this section.

(b) A peace officer who treats animals in accordance with an order of a court under Section 167.106(c), and the peace officer's assistants, have a lien on the animals to secure payment of the expenses and costs of the treatment.

(c) A peace officer may perfect a lien under Subsection (a) by filing a sworn statement of indebtedness with the county clerk of the county in which the animals are located. The statement must describe the animals and must be filed within six months after the treatment or other action of the peace officer giving rise to the lien. The statement may cover a single action or actions over a period of time. If the statement covers actions over a period of time, the statement must be filed within six months after the last treatment or other

action giving rise to the lien.

(d) A peace officer may perfect a lien under Subsection (b) by filing a sworn statement covering a single treatment or a number of treatments with the clerk of the district court. The statement must show the number of animals treated and must describe the animals. The statement must be filed within 12 months after each treatment.

(e) A peace officer may foreclose a lien under Subsection (a) by filing suit against the owner of the animals in a court of competent jurisdiction for collection of the account and foreclosure of the lien. The suit must be filed within 24 months after the statement is filed with the county clerk. In the suit, the court may not require a cost bond of the peace officer or any person to whom the peace officer has assigned the account. The court shall enter judgment for the debt, with interest and costs of suit, and for foreclosure of the lien on the number of animals that the court determines necessary to defray the expenses and fees secured.

(f) The court shall foreclose a lien under Subsection (b) of this section after the filing of the statement and shall do so against the number of animals necessary for the payment of the expenses and costs. The court shall order those animals sold as under execution.

(g) If a lien is foreclosed under this section, the remainder of the proceeds of the sale following deduction of expenses and costs shall be paid to the clerk of the court in which the suit is pending and are subject to the order of the owner of the animals.

Acts 1981, 67th Leg., p. 1449, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 29, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 29, eff. September 1, 2013.

Sec. 167.109. ADMISSIBILITY OF COMMISSION INSTRUMENTS; IDENTIFICATION IN COMPLAINT. (a) A copy of a written instrument issued by the commission is admissible as evidence in any court of this state if the copy is certified by the presiding officer of the commission.

(b) In a prosecution for a violation of this chapter, the state

is not required to include in the complaint, information, or indictment a verbatim copy of a written instrument or proclamation, but may allege the issuance and identify it by date of issuance.

(c) In the trial of a civil or criminal case under this chapter, in which a certified copy of a commission written instrument or a proclamation is to be introduced in evidence, the instrument or proclamation is not required to be filed with the papers of the cause and the party introducing it is not required to give notice of it to the other party.

Acts 1981, 67th Leg., p. 1450, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 554, Sec. 34, eff. Sept. 1, 1995.

Sec. 167.110. PRESUMPTION OF EXISTENCE OR SUFFICIENCY OF TREATMENT. (a) In the trial of any case under this chapter in connection with the treatment of animals or the failure to treat animals, it is presumed that:

(1) the treatment contained a sufficient amount of treatment chemical and the treatment chemical had been properly tested; or

(2) the treatment chemical could have and would have been put into the treatment facility and tested if the owner or caretaker had brought the animals to the treatment facility for the purpose of treatment.

(b) In a criminal prosecution for failure to treat animals under this chapter, the state is not required to allege and prove that the treatment facility contained treatment chemical.

(c) If it is necessary in a court proceeding to prove the test of a treatment chemical, it is only necessary to prove that:

(1) the treatment chemical used was one of the official treatment chemicals prescribed by the commission; and

(2) the inspector tested the treatment chemical in accordance with the rules of the commission.

Acts 1981, 67th Leg., p. 1450, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 30, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 30, eff.

September 1, 2013.

Sec. 167.111. PRESUMPTION OF OWNERSHIP OR CARE. (a) If an inspector determines that a person is the owner, part owner, or caretaker of animals subject to treatment and an order to treat is issued and served, it is presumed that, at the time of a failure to treat, the person was still the owner, part owner, or caretaker of animals subject to treatment located on the premises described in the order. In that case, the state is required to prove only that the person was the owner, part owner, or caretaker of animals subject to treatment located on the premises at the time the order was served.

(b) After the service of an order to treat, if there are no longer any animals subject to treatment located on the premises and if no animals subject to treatment have been illegally removed, the defendant may file a sworn statement of that fact at the beginning of the trial. If the defendant does not file that statement, it is presumed that the defendant's status as owner, part owner, or caretaker remained unchanged since the service of the order.

Acts 1981, 67th Leg., p. 1451, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 30, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 30, eff. September 1, 2013.

Sec. 167.112. VENUE OF CRIMINAL PROSECUTION. The owner, part owner, or caretaker of animals is subject to prosecution under this chapter in the county in which the animals and the premises are located, regardless of whether the defendant was in the county at the time of issuance and service of the order to treat, at the time of the failure to treat, or at the time of violation of the quarantine.

Acts 1981, 67th Leg., p. 1451, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 30, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 30, eff. September 1, 2013.

Sec. 167.113. CIVIL SUIT AGAINST CORPORATE OFFENDER. If a corporation or an agent of the corporation acting within the agent's scope of authority commits an offense under this chapter, the county attorney of the county in which the violation occurs shall institute a civil suit on behalf of the state in a court of competent jurisdiction for collection of the fine.

Acts 1981, 67th Leg., p. 1451, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. PENALTIES

Sec. 167.131. REFUSAL OF INSPECTION. (a) A person commits an offense if, as the owner, part owner, or caretaker of animals, the person fails to gather the animals for inspection at the time and place ordered by the commission under Section 167.008.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1451, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 56, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 21, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 31, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 31, eff. September 1, 2013.

Sec. 167.132. MOVEMENT OF ANIMALS IN VIOLATION OF QUARANTINE. (a) A person commits an offense if the person moves, or as owner, part owner, or caretaker permits the movement of, animals from any land, premises, or enclosure that is under quarantine for tick infestation or exposure in violation of the quarantine without a permit issued by an inspector of the commission or of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

(b) A railroad or other transportation company commits an

offense if it permits an animal to enter stock pens in the tick eradication area under the company's control without a written certificate or permit from an inspector of the commission or of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

(c) An offense under this section is a Class C misdemeanor for each animal moved, permitted to move, or permitted to enter the pen unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(d) Except as provided by this subsection, a person commits a separate offense under Subsection (a) for each county into which animals are moved within 30 days following the day on which the animals leave the county in which they were quarantined. A person does not commit an offense for a county if the person complied with the requirements of this chapter prior to entry into that county.

Acts 1981, 67th Leg., p. 1451, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 57, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 22, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 32, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 32, eff. September 1, 2013.

Sec. 167.133. MOVEMENT OF ANIMALS OR COMMODITIES INTO TEXAS FROM QUARANTINED AREA. (a) A person commits an offense if the person:

(1) moves animals or, as owner, part owner, or caretaker, permits animals to be moved into this state in violation of Section 167.026(a); or

(2) moves animals or commodities into this state in violation of Section 167.026(b) or (c).

(b) An offense under Subsection (a)(1) is a Class C misdemeanor for each animal moved or permitted to be moved unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) An offense under Subsection (a)(2) of this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor. A person commits a separate offense under that subsection for the movement of each animal, each animal product, or each shipment of another commodity.

Acts 1981, 67th Leg., p. 1452, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 58, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 23, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 33, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 33, eff. September 1, 2013.

Sec. 167.134. MOVEMENT OF ANIMALS IN VIOLATION OF PERMIT OR CERTIFICATE. (a) A person commits an offense if the person moves or, as owner, part owner, or caretaker, permits the movement of, animals under a certificate or permit from quarantined land, premises, or enclosures to a place other than that designated on the certificate or permit by the inspector.

(b) An offense under this section is a Class C misdemeanor for each animal moved unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1452, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 59, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 24, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 34, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 34, eff. September 1, 2013.

Sec. 167.135. FAILURE TO POSSESS OR EXHIBIT PERMIT OR CERTIFICATE. (a) A person commits an offense if the person is in

charge of animals for which a certificate or permit is required or is in charge of the conveyance transporting that animal and the person fails to possess or exhibit the certificate or permit in the manner provided by Section 167.027.

(b) An offense under this section is a Class C misdemeanor for each animal moved or conveyed without a certificate or permit as required by Subsection (a) unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1452, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 60, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 25, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 34, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 34, eff. September 1, 2013.

Sec. 167.136. FAILURE TO MAKE STATEMENT OF POSSESSION AND DESTINATION; MAKING FALSE STATEMENT. (a) A person required by Section 167.028 of this code to make a written statement commits an offense if the person:

(1) fails or refuses to make the statement in accordance with that section; or

(2) makes a false statement under that section.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1452, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 61, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 26, eff. Sept. 1, 1993.

Sec. 167.137. FAILURE TO DISINFECT CONVEYANCE. (a) A person required by Section 167.030 of this code to clean and disinfect a conveyance commits an offense if the person fails or refuses to clean and disinfect the conveyance in accordance with the rules of the

commission.

(b) An offense under this section is a Class C misdemeanor for each car or other means of conveyance not cleaned and disinfected unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each day of failure or refusal.

Acts 1981, 67th Leg., p. 1453, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 62, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 27, eff. Sept. 1, 1993.

Sec. 167.138. USE OF SAND AS BEDDING. (a) A person commits an offense if the person uses sand as bedding in an animal conveyance in violation of a quarantine established or a commission rule adopted under Section 167.031.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1453, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 63, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 28, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 35, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 35, eff. September 1, 2013.

Sec. 167.139. MOVEMENT OF COMMODITIES FROM QUARANTINED AREA. (a) A person commits an offense if the person moves a commodity capable of carrying ticks from a quarantined area in violation of a quarantine established or a commission rule adopted under Section 167.032 of this code.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the

offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1453, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 64, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 29, eff. Sept. 1, 1993.

Sec. 167.140. IMPROPER HANDLING AND REMOVAL OF ANIMAL REFUSE OR DEAD OR INJURED ANIMALS. (a) A person commits an offense if the person violates a quarantine established or a commission rule adopted under Section 167.033 of this code.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1453, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 65, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 30, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 36, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 36, eff. September 1, 2013.

Sec. 167.141. FAILURE TO TREAT ANIMALS. (a) A person who is the owner, part owner, or caretaker of animals commits an offense if, after the 12th day following the day on which notice of an order to treat is received, the person fails or refuses to treat the animals as prescribed in the order, on any date prescribed in the order, during the hours prescribed in the order, under the supervision of an inspector, with an official treatment chemical, or in the treatment facility designated in the order.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1453, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 66, eff. Sept. 1,

1989; Acts 1993, 73rd Leg., ch. 548, Sec. 31, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 37, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 38, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 37, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 38, eff. September 1, 2013.

Sec. 167.142. DESTRUCTION OF PUBLIC TREATMENT FACILITIES. (a) A person commits an offense if the person, without lawful authority:

(1) damages or destroys all or part of a dipping vat, pen, chute, or other facility provided under Section 167.059 of this code by use of any means, including cutting, burning, or tearing down or by use of dynamite or another explosive; or

(2) attempts to damage or destroy all or part of one of those facilities.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

Acts 1981, 67th Leg., p. 1453, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 836, Sec. 67, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 32, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 324 (H.B. 1807), Sec. 39, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 773 (S.B. 1095), Sec. 39, eff. September 1, 2013.

Sec. 167.143. FAILURE TO PROVIDE TICK-FREE STOCKYARD FACILITIES. (a) A stockyard company or an owner, operator, or person in charge of a stockyard commits an offense if the person fails or refuses to provide and complete facilities required by the commission under Subchapter D of this chapter within 60 days after

the day on which notice of designation is served under that subchapter.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(c) A person commits a separate offense for each 30 days of failure or refusal within the 24 months following service of notice.

Acts 1981, 67th Leg., p. 1454, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 68, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 548, Sec. 33, eff. Sept. 1, 1993.

Sec. 167.144. REFUSAL TO PERMIT SEARCH. (a) A person commits an offense if the person refuses to permit a person to whom a search warrant is issued under Section 167.102 of this code, that person's assistant, or a peace officer, to enter the property described in the warrant or to perform a duty under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense for each day of refusal.

Acts 1981, 67th Leg., p. 1454, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 69, eff. Sept. 1, 1989.

CHAPTER 168. PULLORUM DISEASE AND FOWL TYPHOID CONTROL

Sec. 168.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Animal Health Commission.

(2) "Laboratory" means the Texas Veterinary Medical Diagnostic Laboratory.

(3) "Flock" means poultry and eggs produced by poultry.

(4) "Hatchery" means an enterprise that operates equipment for the hatching of eggs.

(5) "Poultry" means domestic fowl, including chickens, turkeys, and game birds.

Acts 1981, 67th Leg., p. 1454, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., ch. 40, Sec. 1, eff. April 19, 1991.

Sec. 168.002. CONTROL AND ERADICATION PROGRAM. The laboratory shall promulgate and administer a program to control and eradicate pullorum disease and fowl typhoid, with standards at least as stringent as those specified in the National Poultry Improvement Plan (7 U.S.C. Section 429).

Acts 1981, 67th Leg., p. 1455, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., ch. 40, Sec. 2, eff. April 19, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 2.01, eff. Nov. 12, 1991.

Sec. 168.003. ADMINISTRATION OF PROGRAM; SEARCH WARRANT. (a) In administering the program, the laboratory may:

(1) require the registration of hatcheries and hatchery supply flocks;

(2) examine, test, monitor, and collect samples from any flock, whether a hatchery supply flock or not, if the flock is suspected of being infected or a potential source of infection;

(3) examine, test, monitor, and collect samples from any hatchery supply flock;

(4) enter premises where flocks are kept or eggs are hatched as necessary to administer this chapter; and

(5) promulgate rules necessary to the control and eradication of pullorum disease and fowl typhoid.

(b) If a person conducting an inspection of premises under Subsection (a)(4) of this section desires to be accompanied by a peace officer, the person may apply to any magistrate in the county where the property is located for the issuance of a search warrant. In applying for the warrant, the person shall describe the premises or place to be entered and shall by oath or affirmation give evidence of probable cause to believe that entry is necessary for the control or eradication of pullorum disease or fowl typhoid. The application for the warrant and the warrant itself need only describe the property or premises in terms sufficient to enable the owner or caretaker to know what property is referred to in the documents. The warrant entitles the person to whom it is issued to be accompanied by a peace officer and by assistants. The issuing magistrate may not

charge court costs or other fees for the issuance of this warrant.

Acts 1981, 67th Leg., p. 1455, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., ch. 40, Sec. 2, eff. April 19, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 2.01, eff. Nov. 12, 1991.

Sec. 168.004. QUARANTINE AND DISPOSAL. (a) If the laboratory determines that any part of a flock is infected, it shall certify that information to the commission, and the commission shall verify the infection and immediately quarantine part or all of the flock. The commission may authorize the laboratory to quarantine an infected flock on behalf of the commission. The commission shall give notice of the quarantine in the same manner as provided by law for the quarantine of other livestock and fowl. The commission shall also order a cessation in the sale, movement, or exhibition of quarantined poultry or eggs and may seek an injunction to enforce an order concerning infected flocks.

(b) A quarantined flock shall be disposed of in a manner prescribed by the commission. If disposal involves movement to a state or federally inspected poultry processing establishment, the commission shall issue a certificate to accompany the flock. When the flock is disposed of and other measures necessary to the control and eradication of pullorum disease and fowl typhoid are taken, the commission shall remove the quarantine.

(c) The owner of a quarantined flock is entitled to a retesting of the flock before its disposal.

Acts 1981, 67th Leg., p. 1455, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 70, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 40, Sec. 2, eff. April 19, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 2.01, eff. Nov. 12, 1991.

Sec. 168.005. PUBLIC EXHIBITION. A person may not enter poultry in public exhibition unless the stock originates from a flock or hatchery free of pullorum disease and fowl typhoid or has a negative pullorum-typhoid test after the 90th day before the day of the exhibition. Chickens or turkeys entered in public exhibition

must be accompanied by a certificate of purchase from the hatchery.

Acts 1981, 67th Leg., p. 1456, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 168.006. ASSISTANCE BY FLOCK OWNER. The owner of a flock shall assist the laboratory and the commission in handling the poultry and shall pen and present the flock on request.

Acts 1981, 67th Leg., p. 1456, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., ch. 40, Sec. 2, eff. April 19, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 2.01, eff. Nov. 12, 1991.

Sec. 168.007. NO FEE CHARGED. Neither the laboratory nor the commission may charge a fee for testing or laboratory examination provided for under this chapter.

Acts 1981, 67th Leg., p. 1456, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1991, 72nd Leg., ch. 40, Sec. 2, eff. April 19, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 2.01, eff. Nov. 12, 1991.

Sec. 168.008. PENALTY. (a) A person commits an offense if the person refuses to:

(1) comply with an order of the commission or laboratory concerning an infected flock; or

(2) admit a person with a search warrant obtained as provided in Section 168.003 of this code.

(b) An offense under this section is a Class B misdemeanor.

(c) A person commits a separate offense for each day that the person refuses to comply with an order or admit a person with a search warrant.

Acts 1981, 67th Leg., p. 1456, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 836, Sec. 71, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 40, Sec. 2, eff. April 19, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 2.01, eff. Nov. 12, 1991.

SUBTITLE D. DAIRY PRODUCTS

CHAPTER 181. PAYMENT FOR RAW MILK

Sec. 181.001. DEFINITIONS. In this chapter:

(1) "Cooperative association" means any group in which farmers act together in the market preparation, processing, or marketing of farm products or any association organized under Chapter 52 of this code.

(2) "Dairy farmer" means a farmer engaged in the business of producing milk for sale to milk processors directly or through a cooperative association of which the dairy farmer is a member.

(3) "Milk processor" means a person who operates a milk, milk products, or frozen desserts processing plant that is located in Texas.

(4) "Purchase price" means an amount of money, based on estimated butterfat content at the time of delivery, that a milk processor agrees to pay a dairy farmer for a purchase of raw milk.

Added by Acts 1987, 70th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 676, Sec. 1, eff. Sept. 1, 1989.

Sec. 181.0015. APPLICABILITY OF CHAPTER. When a dairy farmer sells or markets milk through a cooperative association of which the dairy farmer is a member, the cooperative association is considered a dairy farmer for purposes of this chapter.

Added by Acts 1989, 71st Leg., ch. 676, Sec. 2, eff. Sept. 1, 1989.

Sec. 181.002. PAYMENTS HELD IN TRUST. (a) Except as provided by Subsections (b) and (g) of this section, a milk processor shall hold in trust all payments received from the sale of milk for the benefit of the dairy farmer from whom the milk was purchased until the dairy farmer has received full payment of the purchase price for the milk. For the purposes of this subsection, funds placed in escrow in compliance with Subsections (b) through (e) of this section are held in trust.

(b) Except as provided by Subsection (g) of this section, a dairy farmer who sells milk to a milk processor may require the milk

processor to establish an escrow account for the benefit of the dairy farmer. If a dairy farmer requires a milk processor to establish an escrow account under this subsection, the milk processor shall deposit in the escrow account, in the manner provided by Subsections (c) through (e) of this section, all payments received from the sale of any milk or dairy product until the dairy farmer has received full payment of the purchase price for the milk.

(c) A milk processor required to establish an escrow account under this section shall, on receipt of a payment from the sale of milk or dairy products, deposit into the account a sum of money determined by multiplying the total amount of all payments received by the milk processor from the sale of milk or dairy products by the fraction determined by dividing the total quantity of milk purchased by the milk processor for sale as milk or dairy products into the quantity of milk sold by the dairy farmer to the milk processor. The milk processor shall continue to make payments into the escrow account until the dairy farmer has received full payment of the purchase price for the milk.

(d) An escrow account required under this section shall be established for the benefit of the dairy farmer as a segregated, interest-bearing account with a financial institution located in this state the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. If a milk processor is required to establish more than one escrow account under this section, the milk processor may combine the accounts into a single account. If the funds accumulated in a combined escrow account are insufficient to pay all the dairy farmers who have not received full payment and for whose benefit the account was established, the agent of the institution with whom the escrow account is established shall distribute the funds in proportion to the amount then due to each dairy farmer.

(e) On presentation of proof of identity satisfactory to an agent of the institution with which the escrow account is established, the agent shall promptly distribute any funds accumulated for the benefit of the dairy farmer to the dairy farmer or, if required by an applicable federal milk marketing order, to the federal milk administration.

(f) Funds held in trust by a milk processor or in an escrow account are the property of the dairy farmer.

(g) A milk processor is not required to establish an escrow

account or maintain payments in trust under Subsection (a) or (b) of this section for a payment if:

(1) full payment of the purchase price is not received, and the dairy farmer does not give written notice to the milk processor, by the end of the 30th day after the final date for payment of the purchase price as specified by Section 181.003 of this code; or

(2) a payment instrument received by the dairy farmer is dishonored, and the dairy farmer does not give written notice to the milk processor, by the end of the 15th business day after the day that the notice of dishonor was received.

Added by Acts 1987, 70th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 676, Sec. 3, eff. Sept. 1, 1989.

Sec. 181.003. TIME AND METHOD OF PAYMENT FOR PURCHASE. (a) A milk processor may not purchase raw milk from a dairy farmer unless:

(1) payment of the purchase price is made according to the provisions prescribed by an applicable federal milk marketing order;

(2) any additional provisions are agreed on by both the dairy farmer or his agent and the milk processor; and

(3) the medium of exchange used is cash, a check for the full amount of the purchase price, or a wire transfer of money in the full amount.

(b) For purposes of this chapter, a payment delivered by a milk processor to the applicable federal milk market administrator on behalf of a dairy farmer in compliance with the terms of an applicable federal milk marketing order is considered to be delivery of payment to the dairy farmer.

Added by Acts 1987, 70th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 676, Sec. 4, eff. Sept. 1, 1989.

Sec. 181.004. COOPERATIVE TRANSACTIONS. This chapter does not apply to transactions between a cooperative association, while acting as a marketing agent, and its members.

Added by Acts 1987, 70th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1987.

Sec. 181.005. DAMAGES. A milk processor who fails to pay for raw milk as provided by this chapter is liable to the dairy farmer for:

(1) the purchase price of the raw milk;

(2) interest on the purchase price at the highest legal rate, from the date possession is transferred until the date the payment is made in accordance with this chapter; and

(3) a reasonable attorney's fee for the collection of the payment.

Added by Acts 1987, 70th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1987.

SUBTITLE E. LIENS ON ANIMAL PRODUCTS
CHAPTER 188. LIENS FOR ANIMAL FEED
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 188.001. DEFINITIONS. In this chapter:

(1) "Animal feed" includes:

(A) commercial feed as described by Section 141.002(a), including a substance listed by Section 141.002(c) if used as a feed for animals; or

(B) customer-formula feed as defined under Section 141.001.

(2) "Labor" means labor or services performed in the delivery or preparation of animal feed provided by the seller of the animal feed.

(3) "Livestock" means beef cattle, dairy cattle, sheep, goats, hogs, horses, poultry, and ratites.

(4) "Reasonable or agreed charges" means:

(A) any agreed price for animal feed, including labor, sold to a lien debtor at the lien debtor's request; or

(B) the reasonable value of animal feed, including labor, as of the date of delivery or preparation, if there is not an agreed price or an agreed method for determining price.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.002. PROCEEDS. (a) For the purposes of this chapter, proceeds are the amounts received by a lien debtor, before a deduction for taxes, fees, or assessments or a deduction made under a

court order, from the sale of:

(1) the livestock for which the animal feed was used;

(2) meat, milk, skins, wool, or other products derived from that livestock; or

(3) issue born to that livestock.

(b) For the purposes of this chapter, proceeds do not include amounts:

(1) due or owing to a cooperative association under Chapter 51 or 52; or

(2) retained by a cooperative association under Chapter 51 or 52.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER B. ANIMAL FEED LIEN

Sec. 188.006. NOTICE BEFORE PURCHASE; REQUIRED NOTICE BEFORE CLAIMING LIEN. (a) A person claiming a lien under this chapter must have provided notice of the provisions of this chapter, before purchase, either generally to purchasers of animal feed as part of the lien claimant's normal business practices or specifically to the lien debtor. Notice provided under this subsection must read, to the extent applicable, substantially as follows: "The sale of animal feed on credit is subject to Chapter 188, Agriculture Code. Failure to pay the agreed or reasonable charges for the feed may result in the attachment of a lien to the proceeds of the livestock for which the feed is used or the proceeds of the animal products produced from the livestock." A potential lien claimant may satisfy the requirements of this subsection:

(1) by printing or stamping the notice on credit applications filled out by purchasers; and

(2) for future purchases by purchasers who are not notified on the credit application, by printing or stamping the notice on an invoice or on a statement sent by separate cover.

(b) Before a person may claim a lien under this chapter, the person must send to the debtor by certified mail written notice that states:

(1) that the payment of the reasonable or agreed charges is more than 30 days overdue;

(2) the amount that is overdue;

(3) that the debtor has the following three alternatives:

(A) to allow the lien to be filed;

(B) to enter into an agreement granting a security interest in the proceeds described by Section 188.002 under the Business & Commerce Code; or

(C) to pay the reasonable or agreed charges; and

(4) in at least 10-point type, that:

(A) the debtor has until the 10th day after the date on which the notice is received to select an alternative under Subdivision (3), notify the claimant of the alternative selected, and satisfy all the requirements of the selected alternative; and

(B) the claimant may file the notice of claim of lien at any time after the 10th day after the date on which the debtor receives the notice if the debtor does not comply with the requirements of Paragraph (A).

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.007. ATTACHMENT OF LIEN. (a) A lien established under this chapter attaches to the proceeds described by Section 188.002.

(b) A lien established under this chapter attaches on the first day that animal feed is furnished to the lien debtor. A lien that has attached under this section is removed if the lien claimant does not satisfy the notice and filing requirements of this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 4, eff. Sept. 1, 1997.

Sec. 188.008. AMOUNT OF LIEN. The amount of a lien under this chapter is equal to the sum of:

(1) the amount of the unpaid reasonable or agreed charges for animal feed furnished within the 180-day period immediately preceding the day the notice of claim of lien is filed with the secretary of state as provided by this chapter; and

(2) the filing fees for the lien as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 292, Sec. 5, eff. Sept. 1, 1997.

Sec. 188.009. PERSON ENTITLED TO FILE; EXCEPTION. (a) Except as provided by Subsection (b) or by Section 188.047, a person who provides animal feed may file a notice of claim of lien as provided by this chapter.

(b) The claimant may not file a notice of claim of lien if the settlement of a dispute between the claimant and the debtor has been submitted to the department and is pending.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 6, eff. Sept. 1, 1997.

Sec. 188.010. PERFECTION OF LIEN. A lien created under this chapter is perfected on the filing of a notice of claim of lien with the secretary of state as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.011. DURATION OF NOTICE OF CLAIM OF LIEN. (a) Except as otherwise provided by this chapter, the notice of claim of lien is effective, and a new notice of claim of lien is not required to maintain the lien, as long as the person who provides the animal feed, including labor, either:

(1) remains unpaid for the amount secured by the lien; or

(2) continues to provide animal feed on a regular basis to the lien debtor.

(b) For purposes of this section, providing animal feed, including labor, is not considered to be made on a regular basis if a period of more than 45 days elapses between deliveries or preparations.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.012. PROCEDURES FOR SETTLEMENT OF DISPUTES. (a) The commissioner of agriculture by rule shall establish a procedure to settle a dispute between a claimant supplying animal feed and labor

and a debtor. The procedures must provide:

(1) a time requirement for submitting the dispute to the department;

(2) a time requirement within which a notice of the dispute must be submitted to each party; and

(3) a process for evaluating the dispute.

(b) Each party to the dispute is equally liable for the reasonable costs incurred by the department in carrying out this section.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.013. CONTENTS OF NOTICE OF CLAIM OF LIEN. The notice of claim of lien must include:

(1) the name and address of the lien claimant;

(2) the name and address of the lien debtor;

(3) the location of the livestock for which the animal feed was provided;

(4) a statement that the payment of the reasonable or agreed charges is more than 30 days overdue;

(5) the amount that is overdue;

(6) a statement, signed under penalty of perjury, that:

(A) the lien claimant provided notice of the provisions of this chapter, before purchase, either generally to purchasers of animal feed as part of the lien claimant's normal business practices or specifically to the lien debtor, in the manner required by Section 188.006(a);

(B) the lien claimant sent to the lien debtor the notice required by Section 188.006(b);

(C) more than 10 days have elapsed since the date on which the notice was received by the lien debtor; and

(D) the lien debtor has not complied with the requirements of an alternative set out by Section 188.006(b); and

(7) a statement that the lien claimant has an animal feed lien under this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.014. SIGNATURE. The notice of claim of lien shall be

signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.015. FORM. (a) The notice of claim of lien must be filed on a form that satisfies the requirements of a financing statement under Sections 9.502-9.504, Business & Commerce Code, except that:

(1) the lien claimant may be identified either as a lien claimant or as a secured party;

(2) the form must be signed by the lien claimant and is not required to be signed by the lien debtor; and

(3) in the space for the description of the collateral, the information specified in Sections 188.013(3), (4), (5), and (7) must be entered.

(b) A separately signed statement containing the information specified in Section 188.013(6) shall be attached to the form required under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.06, eff. July 1, 2001.

Sec. 188.016. FILING AND MARKING IN OFFICE OF SECRETARY OF STATE; FEE. (a) The notice of claim of lien shall be filed and marked in the office of the secretary of state in the same manner as a financing statement is filed and marked under Section 9.519, Business & Commerce Code.

(b) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party is the same as the fee assessed under Section 9.525, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.07, eff. July 1, 2001.

Sec. 188.017. TIME OF WRITTEN NOTICE. The lien claimant shall

provide written notice of the claim of lien to the lien debtor not later than the 10th day after the date the notice of claim of lien is filed with the office of the secretary of state.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.018. RECOGNITION OF NOTICE AS FINANCING STATEMENT. The secretary of state shall recognize a notice of claim of lien under this subchapter as a financing statement under Subchapter E, Chapter 9, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.08, eff. July 1, 2001.

SUBCHAPTER C. PRIORITY OF LIEN

Sec. 188.026. TIME OF FILING. (a) A lien created under this chapter has the same priority as a security interest perfected by the filing of a financing statement on the date the notice of claim of lien was filed.

(b) A lien created under this chapter does not have priority over:

(1) labor claims for wages and salaries for personal services that are provided by an employee to a lien debtor in connection with the livestock, the production of animal products derived from the livestock, or issue born to the livestock, the proceeds of which are subject to the lien; or

(2) claims for charges for the care of the livestock, the proceeds of which are subject to the lien.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER D. INFORMATION CONCERNING LIEN

Sec. 188.031. ISSUANCE OF CERTIFICATE TO MEMBER OF PUBLIC; FEE. (a) A person may obtain a certificate identifying any lien on file and any notice of claim of lien naming a particular debtor and stating the date and time of filing of each notice and the names and addresses of each lienholder in the certificate.

(b) The amount of the fee for a certificate under Subsection (a) is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 8, eff. September 1, 2009.

Sec. 188.032. COPIES OF NOTICES OF CLAIM OF LIEN AND OTHER NOTICES; FEE. (a) A person may obtain a copy of any notice of claim of an animal feed lien filed.

(b) The fee for a copy of a notice of claim of lien obtained under Subsection (a) is in the amount provided by Section 405.031, Government Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 9, eff. September 1, 2009.

SUBCHAPTER E. ENFORCEMENT OF LIEN

Sec. 188.036. WRITTEN NOTICE TO SECURED CREDITORS BY LIEN CLAIMANT. (a) A lien claimant shall provide written notice to any secured creditor at least 30 days before the date the lien claimant enforces a claim of lien.

(b) For purposes of this section, "secured creditor" means any entity named as a secured party in a financing statement that is filed regarding the debtor and that covers an animal product, an account, or livestock subject to the lien.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.037. FORECLOSURE IN ACTION TO RECOVER REASONABLE OR AGREED CHARGES. The lien claimant may foreclose on a lien under this chapter only in an action to recover the reasonable or agreed charges.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.038. TERMINATION STATEMENT. (a) If a lien claimant receives payment for the total amount secured by a lien under this chapter and the lien claimant has not furnished animal feed during the 45-day period before the date on which payment is received, the lien claimant shall file a termination statement with the secretary of state and shall send the lien debtor a copy of the statement as provided by this section. The statement shall state that the lien claimant no longer claims a security interest under the notice of claim of lien.

(b) The notice of claim of lien must be identified in the statement under Subsection (a) by the date, names of parties to the agreement, and file number of the original lien.

(c) If the lien claimant does not send the termination statement required by this section before the 11th day after the date on which the lien claimant received payment, the lien claimant is liable to the lien debtor for actual damages suffered by the lien debtor as a result of the failure. If the lien claimant acts in bad faith in failing to send the statement, the lien claimant is liable for an additional penalty of $100.

(d) The filing officer in the secretary of state's office shall mark each termination statement with the date and time of filing and shall index the statement under the name of the lien debtor and under the file number of the original lien. If the filing officer has a microfilm or other photographic record of the lien and related filings, the filing officer may destroy the filed notice of claim of lien at any time after receiving the termination statement. If the filing officer does not have a photographic record, the filing officer may destroy the filed notice of claim of lien at any time after the first anniversary of the date on which the filing officer received the termination statement.

(e) The uniform filing fee for filing and indexing the termination statement is the same as the fee assessed under Section 9.525, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.09, eff. July 1, 2001.

Sec. 188.039. RIGHT OF ASSIGNMENT OR TRANSFER; FILING OF STATEMENT. (a) A lien created under this chapter may be assigned by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment with the secretary of state as provided by Section 9.514, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.10, eff. July 1, 2001.

SUBCHAPTER F. MISCELLANEOUS

Sec. 188.046. RULES. The secretary of state may adopt rules necessary to carry out the secretary's duties under this chapter, including prescribing necessary forms.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.047. MAXIMUM NUMBER OF LIENS. Not more than four liens may be enforced under this chapter against the same proceeds of a lien debtor even if the liens are filed by different lien claimants.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

Sec. 188.048. APPLICABILITY OF OTHER LAW. Chapter 9, Business & Commerce Code, applies to a lien created under this chapter to the extent Chapter 9 is consistent with this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 2, eff. Sept. 1, 1995.

TITLE 7. SOIL AND WATER CONSERVATION

CHAPTER 201. SOIL AND WATER CONSERVATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. FINDINGS, PURPOSE, AND POLICY. (a) The

legislature finds that the farm and grazing lands of the State of Texas are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by an occupier of land to conserve the soil and control erosion upon the land causes a washing and blowing of soil and water onto other lands and makes the conservation of soil and control of erosion on those other lands difficult or impossible.

(b) The consequences of soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water that causes destruction of food and cover for wildlife; a blowing and washing of soil into streams that silt over spawning beds and destroy waterplants, diminishing the food supply of fish; a diminishing of the underground water reserve that causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods that bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation

developments, farming, and grazing.

(c) In order to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil waste and soil erosion may be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption are engineering operations such as the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip-cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) It is the policy of the legislature to provide for the conservation of soil and related resources of this state and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state, and thus to carry out the mandate expressed in Article XVI, Section 59a, of the Texas Constitution. It is further declared as a matter of legislative intent and determination of policy that the State Soil and Water Conservation Board is the state agency responsible for implementing the constitutional provisions and state laws relating to the conservation and protection of soil resources.

Acts 1981, 67th Leg., p. 1458, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1985, 69th Leg., ch. 611, Sec. 1, eff. Sept. 1, 1985.

Sec. 201.002. DEFINITIONS. In this chapter:

(1) "Conservation district" means a soil and water conservation district.

(2) "Director" means a member of the governing board of a

conservation district.

(3) "Family farm corporation" means a farm corporation all shareholders of which are related to each other within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

(4) "Federal agency" includes the Soil Conservation Service of the United States Department of Agriculture and any other agency or instrumentality of the federal government.

(5) "Occupier" means a person who is in possession of land lying within a conservation district, either as lessee, tenant, or otherwise.

(6) "State agency" includes a subdivision, agency, or instrumentality of the state.

(7) "State board" means the State Soil and Water Conservation Board.

(8) "State district" means a district established under Section 201.012 of this code.

Acts 1981, 67th Leg., p. 1460, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 2, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 561, Sec. 5, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 201.003. ELIGIBLE VOTER. (a) A person is eligible to vote in an election under this chapter if the person:

(1) is an individual who holds title to farmland or ranchland lying within a conservation district, a conservation district proposed by petition, or territory proposed by petition for inclusion within a conservation district, as applicable;

(2) is 18 years of age or older; and

(3) is a resident of a county all or part of which is included in the conservation district, the conservation district proposed by petition, or the territory proposed for inclusion, as applicable.

(b) If a family farm corporation owns farmland or ranchland in a conservation district, in a proposed conservation district, or in territory proposed for inclusion in a conservation district, the corporation is entitled to one vote in each election under this chapter that would affect the land owned by the corporation. The

corporation shall designate one corporate officer to vote for the corporation in the election. The designated officer must be:

(1) 18 years of age or older; and

(2) a resident of a county all or part of which is included in the conservation district, the proposed conservation district, or the territory proposed for inclusion in a conservation district.

Acts 1981, 67th Leg., p. 1460, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 2, eff. Sept. 1, 1985.

Sec. 201.004. NOTICE; ELECTION INFORMALITIES. (a) If this chapter requires that notice of a hearing or an election be given, the entity responsible for giving notice shall:

(1) publish notice at least twice, with an interval of at least seven days between the publication dates, in a newspaper or other publication of general circulation within the appropriate area; and

(2) post notice for at least two weeks at a reasonable number of conspicuous places within the appropriate area, including, if possible, public places where it is customary to post notices concerning county or municipal affairs generally.

(b) A hearing for which notice is given under this section and which is held at the time and place designated in the notice may be adjourned from time to time without renewing notice for the adjourned dates.

(c) If notice of an election is given substantially in accordance with this section and the election is fairly conducted, an informality in the conduct of the election or in any matter relating to the election does not invalidate the election or its result.

Acts 1981, 67th Leg., p. 1460, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2001, 77th Leg., ch. 1095, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.005. WATER CODE NOT APPLICABLE. Section 12.081, Water Code, does not apply to a conservation district created under this chapter.

Added by Acts 1985, 69th Leg., ch. 611, Sec. 2, eff. Sept. 1, 1985.

Sec. 201.006. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Except as provided by this section, information collected by the state board or a conservation district is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected in response to a specific request from a landowner or the landowner's agent or tenant for technical assistance relating to a water quality management plan or other conservation plan if the assistance is to be provided:

(1) under this code; and

(2) on private land that:

(A) is part of a conservation plan or water quality management plan developed cooperatively with the state board or conservation district; or

(B) is the subject of a report prepared by the state board or conservation district.

(b) The state board or a conservation district may disclose information regarding a tract of land to:

(1) the owner of the tract or the owner's agent or tenant; and

(2) a person other than the owner or the owner's agent or tenant if:

(A) the owner or the agent or tenant consents in writing to full or specified partial disclosure of the information; and

(B) the consent is attached to each plan or report regarding the tract prepared by the state board or conservation district.

(c) The state board or a conservation district may disclose, in a manner that prevents the identification of a particular tract of land, the owner of the tract, or the owner's agent or tenant, a summary of information collected by the state board or conservation district regarding:

(1) the number of acres of land that are in a particular conservation plan;

(2) the number of acres of land that are subject to a particular conservation practice; or

(3) other conservation program information.

(d) The state board or a conservation district shall provide a

person with notice regarding this section at the time the person requests technical assistance from the state board or conservation district.

(e) The state board or a conservation district may disclose information to a law enforcement agency of this state or the United States in compliance with a subpoena for the information.

(f) The state board or a conservation district may disclose information relating to water quality complaints or compliance failures to the Texas Natural Resource Conservation Commission under Section 201.026.

(g) The state board or a conservation district may disclose to the attorney general information relating to a breach of contract.

(h) The state board or a conservation district may not be held liable for damage caused by a violation of this section.

(i) A reference in this section to the state board or a conservation district includes an officer, employee, or agent of the state board or conservation district.

Added by Acts 1997, 75th Leg., ch. 410, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. STATE SOIL AND WATER CONSERVATION BOARD

Sec. 201.011. COMPOSITION. The State Soil and Water Conservation Board is a state agency composed of seven members as follows:

(1) one member elected from each of the state districts in accordance with this subchapter; and

(2) two members appointed by the governor, each of whom is:

(A) actively engaged in the business of farming, animal husbandry, or other business related to agriculture and who wholly or partly owns or leases land used in connection with that business; and

(B) not a member of the board of directors of a conservation district.

Acts 1981, 67th Leg., p. 1461, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 1, eff. Sept. 1, 2003.

Sec. 201.0111. APPOINTMENTS. Appointments to the state board

shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 1, eff. September 1, 2011.

Sec. 201.012. STATE DISTRICTS. (a) For purposes of this chapter, the state is divided into five districts, each of which is composed as provided by this section.

(b) State District No. 1 is composed of the following 51 counties: Dallam, Dawson, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Borden, Scurry, Fisher, and Foard.

(c) State District No. 2 is composed of the following 51 counties: Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Runnels, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Reeves, Culberson, Hudspeth, El Paso, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Mason, Llano, Blanco, Gillespie, Crockett, Schleicher, Menard, Sutton, Kimble, Val Verde, Edwards, Real, Kerr, Kendall, Bandera, Uvalde, Medina, Kinney, and Maverick.

(d) State District No. 3 is composed of the following 50 counties: Burleson, Lee, Bastrop, Travis, Hays, Comal, Guadalupe, Caldwell, Fayette, Washington, Austin, Colorado, Lavaca, Gonzales, Wilson, Bexar, DeWitt, Jackson, Wharton, Fort Bend, Brazoria, Matagorda, Calhoun, Refugio, Bee, Karnes, Live Oak, Atascosa, McMullen, LaSalle, Frio, Duval, Dimmit, Webb, Zapata, Jim Hogg, Starr, Brooks, Hidalgo, Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Jim Wells, Zavala, Goliad, and Victoria.

(e) State District No. 4 is composed of the following 51 counties: Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Upshur, Wood, Rains, Van Zandt, Smith, Gregg, Harrison, Henderson, Cherokee, Rusk, Panola, Shelby, Nacogdoches, Anderson, Freestone, Leon, Robertson, Brazos, Madison, Grimes, Waller, Houston, Walker, Trinity, Angelina, San Augustine,

Sabine, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Harris, Liberty, Hardin, Orange, Jefferson, Chambers, and Galveston.

(f) State District No. 5 is composed of the following 51 counties: Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, Hunt, Collin, Denton, Wise, Jack, Archer, Baylor, Knox, Haskell, Stephens, Throckmorton, Young, Jones, Shackelford, Palo Pinto, Rockwall, Kaufman, Ellis, Parker, Tarrant, Dallas, Johnson, Hood, Somervell, Erath, Eastland, Callahan, Coleman, Brown, Comanche, Mills, Hamilton, Bosque, Hill, Navarro, Limestone, McLennan, Falls, Milam, Bell, Williamson, Burnet, Lampasas, and Coryell.

Acts 1981, 67th Leg., p. 1461, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.013. STATE DISTRICT CONVENTIONS. (a) For the purpose of electing a member to the state board, each state district shall conduct a convention attended by delegates elected from each conservation district in the state district.

(b) The state board shall notify the chairman and secretary of each board of directors of the location of the state district convention in the applicable state district. The state board shall give the notice at least 60 days before the date of the convention.

(c) After receiving notice of the location of the convention, the chairman of each board of directors shall call a meeting for the purpose of electing a delegate and an alternate to the state district convention. In order to serve as a delegate or an alternate, a person must be an eligible voter of the conservation district and actively engaged in farming or ranching.

(d) The chairman of a board of directors shall certify the name and address of the delegate and the alternate to the state board not later than the 30th day before the date of the convention.

(e) Each delegate to a state district convention, or an alternate attending in the place of a delegate, is entitled to a per diem of $30 a day for not more than two days and the state mileage reimbursement rate specified in the General Appropriations Act for travel each way between the county seat of the delegate's residence and the convention site. The state board shall pay the per diem and travel allowance.

(f) A member of the state board is a qualified delegate to the convention of the state district from which the member was elected.

(g) A majority of the delegates to a state district convention constitutes a quorum.

Acts 1981, 67th Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1985, 69th Leg., ch. 611, Sec. 3, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 624 (H.B. 496), Sec. 2, eff. June 15, 2007.

Sec. 201.014. ELECTION. (a) The delegates at a state district convention by majority vote shall elect a member to the state board from among the qualified delegates. No later than the fifth day after the day of the election, the chairman of the convention shall certify to the state board and to the secretary of state the name and address of the person elected.

(b) A state district convention shall conduct an election under this section on the first Tuesday in May of each year in which the term expires for the member of the state board representing that district.

Acts 1981, 67th Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.0141. INELIGIBILITY TO SERVE ON BOARD; INELIGIBILITY FOR CERTAIN POSITIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the state board or act as the general counsel to the state board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the state board.

(c) A person may not be a member of the state board and may not be a state board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201

et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association whose primary purpose is the promotion of soil and water conservation; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association whose primary purpose is the promotion of soil and water conservation.

Added by Acts 1985, 69th Leg., ch. 611, Sec. 10, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(11), eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 1095, Sec. 2, eff. Sept. 1, 2001.

Sec. 201.0142. TRAINING PROGRAM FOR MEMBERS OF STATE BOARD. (a) A person who is elected or appointed and qualifies for office as a member of the state board may not vote, deliberate, or be counted as a member in attendance at a meeting of the state board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the state board;

(2) the programs operated by the state board;

(3) the role and functions of the state board;

(4) the rules of the state board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the state board;

(6) the results of the most recent formal audit of the state board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the state board or the Texas Ethics Commission.

(c) A person elected or appointed to the state board is

entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77th Leg., ch. 1095, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 2, eff. September 1, 2011.

Sec. 201.015. TERM. (a) Members of the state board serve for staggered terms of two years. The terms of the members elected from State Districts No. 1, No. 3, and No. 5 expire in odd-numbered years. The terms of the members elected from State Districts No. 2 and No. 4 expire in even-numbered years.

(b) The term of office of an elected member of the state board begins on the day after the day on which the member was elected. The term of one member appointed by the governor expires February 1 of each odd-numbered year, and the term of the other member appointed by the governor expires February 1 of each even-numbered year.

Acts 1981, 67th Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1985, 69th Leg., ch. 611, Sec. 11, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 200, Sec. 13(b), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 2, eff. Sept. 1, 2003.

Sec. 201.0151. REMOVAL FROM BOARD. (a) It is a ground for removal from the state board that a member:

(1) does not:

(A) if the member is elected, have at the time of election the qualifications required by Section 201.013(c); or

(B) if the member is appointed, have at the time of taking office the qualifications required by Section 201.011(2);

(2) does not maintain during service on the state board the qualifications required by Section 201.011(2) or 201.013(c);

(3) is ineligible for membership under Section 201.0141;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial portion of the member's term; or

(5) is absent from more than half of the regularly

scheduled state board meetings that the member is eligible to attend during a calendar year, without an excuse approved by a majority vote of the state board.

(b) The validity of an action of the state board is not affected by the fact that the action was taken when a ground for removal of a state board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the state board. The chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the executive director shall notify the next highest ranking officer of the state board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 611, Sec. 12, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1095, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 3, eff. September 1, 2011.

Sec. 201.016. VACANCY. Vacancies in the state district positions on the state board are filled by election in the manner provided by this subchapter for an unexpired term or for a full term.

Acts 1981, 67th Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(c), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 4, eff. Sept. 1, 2003.

Sec. 201.017. OATH; COMPENSATION. (a) Each member of the state board shall take the constitutional oath of office.

(b) Each member of the state board is entitled to compensation in an amount not to exceed $100 for each day of actual service rendered. In addition, each member of the state board is entitled to reimbursement for expenses, including traveling expenses, necessarily incurred in the discharge of official duties.

Acts 1981, 67th Leg., p. 1462, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.018. MAJORITY VOTE REQUIREMENT. The concurrence of a majority of the members of the state board is required for the determination of any matter within the board's duties.

Acts 1981, 67th Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.019. OFFICERS AND EMPLOYEES. (a) The state board shall designate one of its members as chairman.

(b) The state board may employ an executive director and other agents and employees, temporary or permanent, as it may require, and shall determine their qualifications, duties, and compensation according to the terms and amounts specified in the General Appropriations Act.

(c) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(3).

(d) The state board may delegate any power or duty under this chapter to its chairman, one or more of its members, or one or more of its agents or employees.

(e) The state board may employ a counsel and legal staff or call on the attorney general for required legal services.

(f) The executive director or the executive director's designee shall provide to members of the state board and state board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers and employees.

(g) The executive director shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

(h) The executive director shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for employees of the state board must be based on the system established under this subsection.

(i) The agency shall develop and implement policies which clearly separate the respective responsibilities of the state board and the staff of the board.

Acts 1981, 67th Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 13, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 1095, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 285, Sec. 31(3), eff. Sept. 1, 2003.

Sec. 201.0191. EQUAL OPPORTUNITY EMPLOYMENT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the state board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the state board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be filed with the governor's office;

(2) be updated annually; and

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1).

Added by Acts 1985, 69th Leg., ch. 611, Sec. 14, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1095, Sec. 6, eff. Sept. 1, 2001.

Sec. 201.020. RECORDS; HEARINGS; RULES. (a) The state board shall keep a complete record of all of its official actions, may hold public hearings at times and places in this state as determined by the board, and may adopt rules as necessary for the performance of its functions under this chapter.

(b) The state board shall develop and implement policies which will provide the public with a reasonable opportunity to appear

before the board and to speak on any issue under the jurisdiction of the board.

Acts 1981, 67th Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 15, eff. Sept. 1, 1985.

Sec. 201.021. OFFICE. The board may select the location of its office.

Acts 1981, 67th Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.022. GENERAL POWERS AND DUTIES. (a) In addition to other powers and duties provided by this chapter, the state board shall:

(1) offer appropriate assistance to the directors of conservation districts in carrying out programs and powers under this chapter;

(2) coordinate the programs of the conservation districts to the extent possible through advice and consultation;

(3) secure the cooperation and assistance of the federal government, federal agencies, and state agencies;

(4) disseminate information throughout this state concerning the activities and programs of the conservation districts;

(5) encourage the formation of a conservation district in each area in which the organization of a conservation district is desirable; and

(6) prepare information of public interest describing the functions of the board and make the information available to the general public and to appropriate state agencies.

(b) The state board may cooperate with the governing boards of wind erosion conservation districts in putting into operation in those districts the provisions of this chapter that do not conflict with Chapter 202 of this code.

Acts 1981, 67th Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 16, eff. Sept. 1, 1985.

Sec. 201.0225. CARRIZO CANE ERADICATION PROGRAM. The state board shall develop and implement a program to eradicate Carrizo cane along the Rio Grande River.

Added by Acts 2015, 84th Leg., R.S., Ch. 431 (S.B. 1734), Sec. 1, eff. June 10, 2015.

Sec. 201.023. FUNDS MANAGEMENT. (a) Except as provided by Section 201.081, the state board shall deposit all money and securities received by it in the state treasury to the credit of a special fund known as the state soil conservation fund. That fund shall be appropriated to the state board for use in the administration of this chapter and is subject to the same care and control while in the state treasury as other funds of the state.

(b) The financial transactions of the state board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(c) The state board by resolution may authorize the chairman of the board or the administrative officer to approve claims and accounts payable by the board. That approval is sufficient to authorize the comptroller of public accounts to issue a warrant drawn on the funds appropriated to the board for payment of the claim and is sufficient to authorize the comptroller to honor payment of the warrant.

(d) The state board may accept any donation or contribution in any form, including money, materials, or services, and from any source for the purpose of carrying out this chapter, including the cost of conducting the annual meeting of conservation district directors under Section 201.081 of this code.

Acts 1981, 67th Leg., p. 1463, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 4, 17, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 584, Sec. 75, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 55, Sec. 2, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 2.14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1095, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 1, eff. June 17, 2011.

Sec. 201.0231. COMPLAINTS. (a) The state board shall maintain a central database of complaints filed with state board offices and a system to promptly and efficiently act on a complaint filed with a state board office. The state board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The state board shall make information available describing its procedures for complaint investigation and resolution.

(c) The state board shall periodically notify the parties to the complaint of the status of the complaint until final disposition.

Added by Acts 1985, 69th Leg., ch. 611, Sec. 18, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 1095, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 4, eff. September 1, 2011.

Sec. 201.024. CONTRACTS FOR WATERSHED PROTECTION AND FLOOD CONTROL PLANS. The state board may contract with one or more state or federal agencies or with one or more private firms for the development of plans necessary for securing detailed information and developing work plans for the location, design, installation, and construction of structures and other improvements for the reduction and prevention of floods in state-approved watershed protection and flood prevention projects of 250,000 acres or less.

Acts 1981, 67th Leg., p. 1464, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.025. SUNSET PROVISION. The State Soil and Water Conservation Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2023.

Acts 1981, 67th Leg., p. 1464, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 189, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 611, Sec. 19, eff. Sept. 1, 1985;

Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.23(a), eff. Nov. 12, 1991; Acts 2001, 77th Leg., ch. 1095, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.01, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 5, eff. September 1, 2011.

Sec. 201.026. NONPOINT SOURCE POLLUTION. (a) The state board is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.

(b) As the lead agency, the state board shall:

(1) plan, implement, and manage programs and practices for abating agricultural and silvicultural nonpoint source pollution;

(2) have as a goal:

(A) setting priorities among voluntary efforts to reduce nonpoint source pollution and promoting those efforts in a manner consistent with the priorities; and

(B) assisting landowners to prevent regulatory enforcement actions related to nonpoint source pollution; and

(3) provide to the agricultural community information regarding the jurisdictions of the state board and the Texas Commission on Environmental Quality related to nonpoint source pollution.

(c) Except as required by Subchapter L, Chapter 26, Water Code, a permit or other authorization is not required under that chapter as a prerequisite for the land application of animal waste for beneficial use at agronomic rates to property that is not owned or controlled by the owner or operator of a facility that Chapter 26, Water Code, requires to hold a permit or other authorization. This section does not affect the authority of the Texas Commission on Environmental Quality to investigate or take enforcement action against a point source discharge under Section 26.121, Water Code.

(d) On the request of the owner of land on which animal waste is applied for agricultural purposes, the state board may create and certify a water quality management plan for the land.

(e) Other state agencies with responsibility for abating agricultural and silvicultural nonpoint source pollution shall coordinate any abatement programs and activities with the state

board.

(f) The state board shall represent the state before the federal Environmental Protection Agency or other federal agencies on a matter relating to agricultural or silvicultural nonpoint source pollution. Nothing herein shall impair the ability of:

(1) the General Land Office to represent the state before any federal agency in matters relating to the state's participation in the federal coastal zone management program;

(2) the Texas Commission on Environmental Quality to represent the state before any federal agency in matters relating to the state's overall participation in the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); or

(3) the Texas Department of Agriculture to represent the state before any federal agency in matters relating to the state's overall participation in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.).

(g) In an area that the state board identifies as having or having the potential to develop agricultural or silvicultural nonpoint source water quality problems or an area within the "coastal zone" designated by the commissioner of the General Land Office, the state board shall establish a water quality management plan certification program that provides, through local soil and water conservation districts, for the development, supervision, and monitoring of individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under rules and criteria adopted by the state board and comply with state water quality standards established by the Texas Commission on Environmental Quality. The state board shall certify a plan that satisfies the state board's rules and criteria and complies with state water quality standards established by the Texas Commission on Environmental Quality under the commission's exclusive authority to set water quality standards for all water in the state.

(h) At the request of the landowner, the state board may develop and certify a water quality management plan for any agricultural or silvicultural land in the state. Section 26.302(b-1), Water Code, applies to a water quality management plan developed or certified for use by a poultry facility under this section.

(i) A water quality management plan developed under this section that covers land on which animal carcasses will be buried

must include:

(1) disposal management practices for the carcasses, including a requirement that poultry carcasses may be buried on site only in the event of a major die-off that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility; and

(2) burial site requirements that identify suitable locations for burial based on site-specific factors including:

(A) land use;

(B) soil conditions; and

(C) proximity to groundwater or surface water supplies.

(j) The Texas Commission on Environmental Quality may not require a landowner who requests and complies with a water quality management plan under Subsection (i) to record the burial of animal carcasses in the county deed records or report the burial to the commission.

(k) The state board shall notify the Texas Commission on Environmental Quality not later than the 10th business day after the date the state board decertifies a water quality management plan for an animal feeding operation.

(l) The state board shall update the state board's identification of priority areas for the control of nonpoint source pollution at least every four years. The state board, in considering changes to the identified priority areas, shall consider:

(1) bodies of water the Texas Commission on Environmental Quality has identified as impaired through the state water quality assessment process;

(2) threatened areas in which action is necessary to prevent nonpoint source pollution; and

(3) other areas of concern, including groundwater concerns.

(m) Complaints concerning a violation of a water quality management plan or a violation of a law or rule relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the state board shall be referred to the state board. The state board, in cooperation with the local soil and water conservation district, shall investigate the complaint. On completion of the investigation, the state board, in consultation with the soil and water conservation district, either shall determine that further action is not warranted or shall develop and implement a corrective action plan to address the complaint. If the person about

whom the complaint has been made fails or refuses to take corrective action, the state board shall refer the complaint to the Texas Commission on Environmental Quality.

Added by Acts 1985, 69th Leg., ch. 611, Sec. 5, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 54, Sec. 1, eff. April 29, 1993; Acts 2001, 77th Leg., ch. 1095, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1189, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 418 (S.B. 1707), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 875 (H.B. 1719), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 875 (H.B. 1719), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 875 (H.B. 1719), Sec. 3, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(1), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(1), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 1, eff. September 1, 2011.

Sec. 201.027. ENFORCEMENT REFERRAL RECORDS. (a) The state board shall maintain detailed records about each state board referral of an agricultural or silvicultural operation to the Texas Natural Resource Conservation Commission for enforcement.

(b) Records maintained under Subsection (a) must include information regarding the final disposition of the referral by the Texas Natural Resource Conservation Commission, including any enforcement action taken against the agricultural or silvicultural operation.

Added by Acts 2001, 77th Leg., ch. 1095, Sec. 12, eff. Sept. 1, 2001.

Sec. 201.028. ANNUAL REPORT. Not later than January 1 of each year, the state board shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives

a report relating to the status of the budget areas of responsibility assigned to the board, including outreach programs, grants made and received, federal funding applied for and received, special projects, and oversight of water conservation district activities.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 13(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 3, eff. September 1, 2013.

Sec. 201.029. GRANT PROGRAM ADMINISTRATION. (a) In this section, "grant program" means a competitive grant program administered by the state board under this title and funded primarily by state funds. The term includes a program for water quality management, water supply enhancement, or flood control.

(b) The state board shall:

(1) develop goals for each grant program, including desired program results and descriptions of program beneficiaries;

(2) establish statewide evaluation criteria to document grantee compliance with grant conditions;

(3) monitor compliance with the evaluation criteria described by Subdivision (2) by gathering, maintaining, and analyzing comprehensive data on grant program activities;

(4) analyze the extent to which grant programs achieve the goals developed under Subdivision (1), using either empirical or nonempirical evidence; and

(5) publish the analysis required by Subdivision (4) on the state board's Internet website or in any annual publication the state board is required by statute to publish.

Added by Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 6, eff. September 1, 2011.

Sec. 201.030. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The state board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of state board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the state board's jurisdiction.

(b) The state board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The state board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 6, eff. September 1, 2011.

SUBCHAPTER C. CREATION, BOUNDARY CHANGES, AND DISSOLUTION OF SOIL AND WATER CONSERVATION DISTRICTS

Sec. 201.041. PETITION. (a) The eligible voters of any territory may petition the state board for the organization of a soil and water conservation district. The petition must be signed by at least 50 persons eligible to vote in an election to create the conservation district unless the territory contains fewer than 100 eligible voters, in which case the petition must be signed by a majority of the eligible voters in the territory.

(b) The petition must contain:

(1) a proposed name for the conservation district;

(2) a description of the territory proposed to be organized as a conservation district;

(3) a statement that there is need for a conservation district to function in the described territory in the interest of the public health, safety, and welfare; and

(4) a request that:

(A) the state board define the boundaries of the conservation district;

(B) an election be held within the defined territory on the question of creation of a conservation district in that

territory; and

(C) the state board determine that the conservation district be created.

(c) The petition is not required to describe the territory by metes and bounds or by legal subdivisions, but must be generally accurate in order to be sufficient.

(d) If more than one petition is filed covering parts of the same territory, the state board may consolidate any or all of the petitions.

Acts 1981, 67th Leg., p. 1464, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.042. HEARING. (a) Not later than the 30th day after the day on which a petition is filed with the state board, the state board shall give notice of a hearing on:

(1) the question of the desirability and necessity of the creation of a conservation district in the interest of the public health, safety, and welfare;

(2) the question of the appropriate boundaries to be assigned to the conservation district;

(3) the propriety of the petitions and other proceedings taken under this chapter; and

(4) all questions relevant to those matters.

(b) Following notice, the state board shall conduct a hearing on the petition. Any interested person, including a person who is an eligible voter in the territory described in the petition or in the territory that is considered for addition to the described territory, is entitled to attend the hearing and be heard.

(c) If it appears at the hearing that it may be desirable to include within the conservation district territory that is outside the area within which notice has been given, the state board shall adjourn the hearing and give notice of further hearings throughout the entire area considered for inclusion in the conservation district. Following that notice, the board shall reconvene the hearing.

(d) After the hearing, if the state board, on the basis of the facts presented at the hearing and other available information, determines that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the

territory considered at the hearing, the board shall record that determination, define the boundaries of the conservation district by metes and bounds or by legal subdivisions, and conduct an election in accordance with Section 201.043 of this code. The board may not include within the defined boundaries any territory that is within the boundaries of another conservation district.

(e) In making the determination of need and defining the boundaries of the conservation district, the state board shall give due weight and consideration to:

(1) the topography of the area considered and of the state;

(2) the soil composition of the area considered and of the state;

(3) the distribution of erosion, the prevailing land-use practices, and the desirability and necessity of including within the conservation district the area under consideration;

(4) the benefits the area under consideration may receive from being included within the boundaries of the conservation district;

(5) the relation of the area considered to existing watersheds and agricultural regions and to other conservation districts in existence or proposed to be created; and

(6) other relevant physical, geographical, and economic factors, having due regard to the legislative determinations made in Section 201.001 of this code.

(f) After the hearing and consideration of the relevant facts, if the state board determines that there is no need for a conservation district to function in the territory considered at the hearing, it shall record that determination and deny the petition.

(g) The state board shall pay all expenses for the issuance of notices of the public hearings. The board shall supervise the conduct of those hearings and may adopt rules governing the conduct of the hearings.

Acts 1981, 67th Leg., p. 1465, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.043. ELECTION. (a) Within a reasonable time after determining the need for a conservation district and defining the boundaries of the proposed conservation district, the state board shall conduct an election within the proposed conservation district

on the proposition of the creation of the conservation district.

(b) The state board shall give notice of the election and the notice must state the boundaries of the proposed conservation district.

(c) The ballot for the election shall be printed to provide for voting for or against the proposition: "The creation of a soil and water conservation district from the land below described in general terms and lying in the county (or counties) of _____."

(d) Each eligible voter in the proposed conservation district, as determined by the state board, is entitled to vote in the election. If part of a county is included within a proposed conservation district and the polling place of an eligible voter within the county is not included within the conservation district, the voter is entitled to vote at the polling place for the voter's land in the conservation district.

(e) Except as otherwise provided by this chapter, the election shall be conducted in conformity with the general laws relating to elections.

(f) The state board shall adopt rules for the conducting of elections, including rules providing for the registration of all eligible voters prior to the date of the election or prescribing another appropriate procedure for the determination of eligibility to vote.

Acts 1981, 67th Leg., p. 1466, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.044. STATE BOARD DETERMINATION OF ADMINISTRATIVE PRACTICABILITY AND FEASIBILITY. (a) After announcing the results of an election, the state board shall consider, determine, and record its determination of whether the operation of the conservation district within the defined boundaries is administratively practicable and feasible. In making that determination, the state board shall give due regard and consideration to:

(1) the attitude of eligible voters in the defined boundaries;

(2) the number of persons eligible to vote in the election who voted;

(3) the number of votes cast in the election favoring creation of the conservation district in proportion to the total

number of votes cast;

(4) the approximate wealth and income of the eligible voters of the proposed conservation district;

(5) the probable expense of carrying on erosion control operations within the proposed conservation district; and

(6) other relevant social and economic factors, having due regard for the legislative determinations made in Section 201.001 of this code.

(b) The state board may proceed with the organization of the conservation district only if:

(1) the board determines that the operation of the conservation district is administratively practicable and feasible; and

(2) at least two-thirds of the votes cast in the election were in favor of creation of the conservation district.

(c) If the state board determines that the operation of the conservation district is not administratively practicable and feasible, the state board shall deny the petition.

Acts 1981, 67th Leg., p. 1466, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.045. SUBSEQUENT PETITIONS. If the state board denies a petition under this subchapter, a subsequent petition covering the same or substantially the same territory may not be filed with the board until six months have expired following the date of denial.

Acts 1981, 67th Leg., p. 1467, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.046. ESTABLISHMENT OF DISTRICT SUBDIVISIONS; APPOINTMENT OF INITIAL DIRECTORS. After determining that the operation of the conservation district is administratively practicable and feasible, the state board shall divide the conservation district into five numbered subdivisions that are as nearly equal in area as practicable. The board shall appoint one director each from the subdivisions numbered two and four. Those directors shall perform the duties required by this subchapter and shall serve on the initial governing board of the conservation district until the regular election for those subdivisions.

Acts 1981, 67th Leg., p. 1467, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.047. APPLICATION FOR CERTIFICATE OF ORGANIZATION. (a) The two appointed directors shall present to the secretary of state an application for a certificate of organization for the conservation district containing the information prescribed by Subsection (b) of this section and a statement from the state board containing the information prescribed by Subsection (c) of this section. The application and the statement are not required to contain any detail other than a recital of the information required by this section.

(b) The application for the certificate must contain:

(1) a statement that:

(A) a petition for the creation of the conservation district was filed with the state board in accordance with this chapter;

(B) the proceedings specified in this chapter were taken relative to that petition;

(C) the application is being filed in order to complete the organization of the conservation district as a governmental subdivision and a public body corporate and politic under this chapter; and

(D) the state board has appointed the applicants as directors;

(2) the name and official residence of each of the appointed directors;

(3) a certified copy of the appointment of the directors evidencing their right to office;

(4) the term of office of each of the appointed directors;

(5) the name that is proposed for the conservation district; and

(6) the location of the principal office of the appointed directors.

(c) The statement of the state board must set forth the boundaries of the conservation district and certify that:

(1) a petition was filed, notice issued, and a hearing held as required by this chapter;

(2) the board did determine that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory;

(3) the board did define the boundaries of the conservation district;

(4) notice was given and an election held on the question of the creation of the conservation district;

(5) the result of the election showed a two-thirds majority of the votes cast in the election to be in favor of the creation of the conservation district; and

(6) the board did determine that the operation of the conservation district is administratively practicable and feasible.

(d) The directors shall subscribe and swear to the application before an officer authorized by law to take and certify oaths. That officer shall certify on the application that the officer personally knows the directors, that the officer knows them to be the directors as affirmed in the application, and that each director has subscribed to the application in the officer's presence.

Acts 1981, 67th Leg., p. 1467, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.048. ISSUANCE OF CERTIFICATE. (a) The secretary of state shall examine the application for a certificate of organization and the statement of the state board. If the secretary of state finds that the name proposed for the conservation district is not identical to that of another conservation district or so nearly similar as to lead to confusion or uncertainty, the secretary shall receive the application and statement, file them, and record them in an appropriate book of record in the secretary's office.

(b) If the secretary of state finds that the name proposed for the conservation district is identical to that of another conservation district or so nearly similar as to lead to confusion or uncertainty, the secretary shall certify that fact to the state board and the state board shall submit to the secretary a new name for the conservation district that is free of that defect. After receipt of a name that is free of that defect, the secretary shall record the application and statement, with the modified name, in an appropriate book of record in the secretary's office.

(c) When the application and statement are filed and recorded as provided by this section, the conservation district constitutes a governmental subdivision and a public body corporate and politic.

(d) The secretary of state shall make and issue to the

directors a certificate, under the state seal, of the due organization of the conservation district. The secretary shall record the certificate with the application and statement.

Acts 1981, 67th Leg., p. 1468, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 24, eff. Aug. 30, 1993.

Sec. 201.049. EFFECT OF CERTIFICATE; ADMISSIBILITY. In a suit, action, or proceeding involving the validity or enforcement of, or relating to, a contract, proceeding, or action of a conservation district, the conservation district is considered to have been established in accordance with this chapter on proof of the issuance of a certificate of organization by the secretary of state. A copy of the certificate certified by the secretary of state is admissible in evidence in the suit, action, or proceeding and is proof of the filing of the certificate and the contents of the certificate.

Acts 1981, 67th Leg., p. 1468, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.050. CHANGE IN CONSERVATION DISTRICT OR SUBDIVISION BOUNDARIES. (a) A group of eligible voters may petition the state board for the inclusion of additional territory in an existing conservation district. Except as provided by Subsection (b) of this section, the petition is governed by, and the state board shall conduct proceedings on the petition in accordance with, the provisions of this subchapter relating to petitions for the creation of a conservation district. The state board shall prescribe the form for the petition, which must be as similar as practicable to the form provided for petitions for the creation of a conservation district.

(b) If there are fewer than 100 eligible voters in the area proposed for inclusion in the conservation district, and the petition is signed by two-thirds of those persons, the area may be included in the conservation district without an election. A person is eligible to vote at an election for including territory in an existing conservation district only if the person owns land in the territory to be included.

(c) The board of directors of one or more conservation districts may submit a petition to the state board requesting a

division of the conservation district, a combination of two or more conservation districts, or a transfer of land from one conservation district to another. The petition must be signed by a majority of the directors of each conservation district affected. The state board shall determine the practicability and feasibility of the proposed change. If the state board determines that the change is not administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the change is administratively practicable and feasible, it shall record that determination and reorganize the conservation districts in the manner set out in the petition.

(d) The state board, in cooperation with the landowners of a conservation district, may change the boundaries of the subdivisions of the conservation district as may be necessary or desirable because of additions of territory to the conservation district.

Acts 1981, 67th Leg., p. 1469, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.051. DISSOLUTION OF CONSERVATION DISTRICT. (a) A conservation district may be dissolved by majority vote of the eligible voters in an election conducted in the manner provided by this subchapter for its creation. The board of directors of the conservation district shall notify the state board of the outcome of an election under this section.

(b) On receiving notice of a vote to dissolve a conservation district, the state board shall determine whether the conservation district should continue to operate. If the state board determines that continuing the operation of the conservation district is not administratively practicable and feasible, the state board shall deliver to the secretary of state certification of the district's dissolution.

(c) Certification by the state board to the secretary of state is sufficient notice of the dissolution of a conservation district. The secretary of state shall issue to the directors of the dissolved district a certificate of dissolution and shall record the fact of dissolution in the appropriate records of the secretary's office.

(d) On receiving a certificate of dissolution, the board of directors of the dissolved district shall terminate the affairs of the conservation district. The board shall transfer to the state

board all property owned by the conservation district. The state board may:

(1) sell the property at a public auction and deposit the net proceeds of the sale in the State Treasury; or

(2) make the property available for use by other conservation districts.

(e) If the dissolution of a conservation district is for the purpose of adjusting the boundaries and the conservation district is immediately reorganized, the funds and equipment of the dissolved conservation district pass to the reorganized conservation district. If more than one conservation district is created under the reorganization, the funds and equipment of the dissolved conservation district shall be divided under terms satisfactory to the directors of the reorganized conservation districts.

(f) The state board may not conduct an election under this section for a conservation district before the end of the fifth year after the date of the last election under this section for that district.

Acts 1981, 67th Leg., p. 1469, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 6, eff. Sept. 1, 1985.

Sec. 201.0511. EFFECT OF DISSOLUTION. (a) On issuance of a certificate of dissolution under Section 201.051 of this code, the ordinances and regulations adopted by the dissolved district cease to be in effect.

(b) A contract to which a dissolved district was a party remains in effect according to the terms of the contract. The state board is substituted for the dissolved district for purposes of performance of a contract. Under a contract of the dissolved district, the state board has all the rights and liabilities under the contract that the board of directors of the dissolved district had under the contract, including the right to sue and the liability to be sued.

(c) The dissolution of a conservation district does not affect a lien on a judgment obtained or an action pending under Section 201.128 of this code. The state board has all the rights and obligations with respect to a lien or an action under Section 201.128 as the board of directors of the dissolved district had under that

section.

Added by Acts 1985, 69th Leg., ch. 611, Sec. 6, eff. Sept. 1, 1985.

SUBCHAPTER D. SOIL AND WATER CONSERVATION DISTRICT ADMINISTRATION

Sec. 201.071. COMPOSITION OF BOARD OF DIRECTORS. (a) Except as provided for the initial board, the board of directors of a conservation district is composed of five persons, with one director elected from each of the five numbered subdivisions created by the state board under Section 201.046 of this code.

(b) The initial board of directors is composed of the two directors appointed by the state board and three elected directors.

Acts 1981, 67th Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.072. QUALIFICATIONS OF DIRECTORS. In order to serve as a director, a person must be an eligible voter who owns land within the numbered subdivision from which the person is appointed or elected and must be actively engaged in the business of farming or animal husbandry.

Acts 1981, 67th Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.073. ELECTION OF DIRECTORS. (a) Except as provided for the initial election of directors, the persons who are eligible voters and own land in a conservation district are entitled to elect the directors for the district. For that purpose, the eligible voters shall meet each year on a date and at a time and place designated by the existing board of directors. The directors shall designate for the election a date that is after September 30 and before October 16. Before July 15 of each year, the directors shall designate a date, time, and place for that year's election of directors.

(b) To be eligible for election under this section, an individual must file a written notice of the individual's candidacy. The individual must file the notice:

(1) during established business hours in the month of August at a location designated by the district; and

(2) in accordance with district rules.

(c) The district shall post a notice stating the requirements of Subsection (b) in a prominent public place.

(d) If only one individual files a notice of candidacy for a director's office during the period specified by Subsection (b)(1):

(1) an election to fill that position is not required; and

(2) on the established election date, the directors shall:

(A) declare the single candidate as the director for that office; and

(B) certify the selection of the individual as director in the manner provided by Subsection (f) for an elected director.

(e) If more than one individual files a notice of candidacy for a director's office during the period specified by Subsection (b)(1), the election shall be held at a meeting of eligible voters scheduled under Subsection (a). The district shall print ballots with the names of the candidates for each director's office to be filled. The district by rule shall provide for allowing eligible voters by personal appearance to cast votes on printed ballots at a location designated by the district instead of at the meeting. The rules must provide for votes to be accepted at the designated location during established business hours for a period beginning on the 17th day before the date of the meeting and continuing through the fourth day before the date of the meeting, including at least one Saturday during that period. If, because of the date scheduled for the meeting, it is not possible to begin early voting by personal appearance on the prescribed date, the early voting period shall begin on the earliest practicable date as set by the district. Each eligible voter present at the scheduled meeting shall cast a vote by ballots printed under this subsection. If after tabulation by the district of the votes cast before the meeting at the designated location and the votes cast at the meeting no nominee has received a majority of the votes, the two candidates receiving the largest number of votes shall be voted on in a second ballot, and the candidate receiving the largest number of votes among those cast before the meeting at the designated location and those cast at the meeting in the second ballot is elected. The district by rule shall provide for certifying eligible voters voting at the designated location and at the meeting.

(f) The directors shall:

(1) record the proceedings of the meeting; and

(2) not later than the fifth day after the date of the election, certify to the state board the name and the proper address of the person elected.

(g) The Election Code does not apply to elections under this section.

Acts 1981, 67th Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 11, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 611, Sec. 7, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 1095, Sec. 13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1040, Sec. 1, eff. June 20, 2003.

Sec. 201.074. ELECTION OF INITIAL DIRECTORS. (a) Not later than the 30th day after the date of issuance of a certificate of organization by the secretary of state, the state board shall designate a time and place for an election of directors in the subdivisions of the conservation districts numbered one, three, and five and shall give notice of that election.

(b) The persons who are eligible voters and own land in a conservation district are entitled to elect the directors for the district. The eligible voters shall meet and elect the directors in the manner provided by Section 201.073 of this code, except that the state board shall designate the date, time, and place for the election.

(c) The Election Code does not apply to elections under this section.

Acts 1981, 67th Leg., p. 1470, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 8, eff. Sept. 1, 1985.

Sec. 201.075. TERMS OF DIRECTORS. (a) Except as provided for the initial directors, directors serve for staggered terms of four years with the term of one or two members expiring each year.

(b) The term of office of a director begins on the day after the director's election.

Acts 1981, 67th Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 20, eff. Sept. 1, 1985.

Sec. 201.076. VACANCY; REMOVAL. (a) If a vacancy occurs in the office of director, the remaining directors by majority vote shall appoint a director for the unexpired term. The appointee must be approved by the state board before taking office.

(b) If a vacancy occurs in the office of director and the vacancy is not filled by appointment by the remaining directors as required by this section within six months after the vacancy occurs, the state board may call for an election to be held for the purpose of electing a director to complete the term.

(c) If the number of qualified directors is less than the number required to conduct business as required by Section 201.078 of this code, the state board may call for an election to be held for the purpose of electing directors for each vacant subdivision to complete the unexpired term.

(d) An election under this section must be conducted in the manner provided by Section 201.073 of this code, except that the state board shall designate the date, time, and place of the election.

(e) Following notice and a hearing, the state board may remove a director, but only if the director:

(1) neglects the duty of the office;

(2) is guilty of malfeasance in office; or

(3) is disqualified as a voter in the conservation district.

Acts 1981, 67th Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1991, 72nd Leg., ch. 9, Sec. 1, eff. Aug. 26, 1991.

Sec. 201.077. COMPENSATION AND MILEAGE ALLOWANCE. (a) A director may receive compensation in an amount not to exceed $30 for each day the director attends meetings of the board of directors, plus the state mileage reimbursement rate specified in the General Appropriations Act for travel each way between the residence of the director and a designated meeting place within the boundaries of the conservation district.

(b) A director is entitled to be paid quarterly, but may not receive the compensation and mileage allowance for more than five

days in any three-month period except as provided for attending an annual meeting or a state district convention.

(c) Two directors are entitled to receive $30 a day for not more than two days, and one director is entitled to receive the state mileage reimbursement rate specified in the General Appropriations Act for travel, while attending the annual statewide meeting of directors.

Acts 1981, 67th Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 624 (H.B. 496), Sec. 1, eff. June 15, 2007.

Sec. 201.078. MAJORITY VOTE REQUIREMENT. The concurrence of a majority of the directors is required for the determination of any matter within their duties.

Acts 1981, 67th Leg., p. 1471, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.079. OFFICERS AND EMPLOYEES; SURETY BONDS. (a) The directors shall designate from among themselves a chairman, vice-chairman, and secretary and may change those designations from time to time.

(b) The directors may employ officers, agents, and employees, temporary or permanent, as the board of directors may require and shall determine their qualifications, duties, and compensation.

(c) The directors may delegate any power or duty under this chapter to the chairman, one or more of the directors, or one or more of their agents or employees.

(d) The directors shall provide that all officers and employees who are entrusted with funds or property of the conservation district be bonded in accordance with Chapter 653, Government Code.

Acts 1981, 67th Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(29), eff. Sept. 1, 1995.

Sec. 201.080. RECORDS, REPORTS, ACCOUNTS, AND AUDITS. (a) The

directors shall provide for keeping full and accurate accounts and for keeping records of proceedings conducted and resolutions, regulations, and orders issued or adopted.

(b) The directors shall furnish to the state board on request copies of ordinances, rules, regulations, orders, contracts, forms, other documents that the directors adopt or employ, and other information concerning the directors' activities that the state board requires in the performance of its duties under this chapter. The state board may demand at any time and pay the costs of an audit of a conservation district's accounts.

(c) The directors shall deposit all funds with state or national banks or in savings and loan associations. The directors shall either deposit the funds in demand or time accounts, including interest-bearing accounts, or purchase certificates of deposit. The funds may be withdrawn only on approval of the directors and only by check or order signed by the chairman and the secretary.

(d) The directors shall provide for an audit of the conservation district's accounts. The audit must be performed subject to rules adopted by the state board.

(e) The conservation district may pay the cost for keeping accounts and making audits out of any available funds of the conservation district.

(f) The preservation, microfilming, destruction, or other disposition of the records of the conservation district is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1981, 67th Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 611, Sec. 9, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 1248, Sec. 25, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 8, Sec. 1, eff. Aug. 26, 1991.

Sec. 201.081. ANNUAL MEETING OF DIRECTORS. (a) The state board shall provide for an annual meeting of conservation district directors to be held at a time and place determined by the state board.

(b) The state board may charge each person attending an annual meeting registration and other fees to defray the cost of conducting the annual meeting.

(c) The state board may maintain an account in a local depository bank for the purpose of depositing fees collected under Subsection (b) of this section or for depositing donations or grants made for the purpose of funding the annual meeting of the conservation district directors. Money in the account shall be held in trust for persons attending the annual meeting and shall be used exclusively for paying the costs of the meeting. The state board may select any state or national bank as the depository. An account maintained under this subsection is subject to audit by the State Auditor.

Acts 1981, 67th Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 3851, ch. 605, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 55, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER E. GENERAL POWERS AND DUTIES OF SOIL AND WATER CONSERVATION DISTRICTS

Sec. 201.101. CORPORATE POWERS. (a) A conservation district is a governmental subdivision of this state and a public body corporate and politic. A conservation district may:

(1) sue and be sued in the name of the conservation district;

(2) have a seal, which shall be judicially noticed;

(3) make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and

(4) adopt rules consistent with this chapter to carry into effect its purposes and powers.

(b) A conservation district may execute notes on the faith and credit of the conservation district for the purpose of making repairs, additions, or improvements to any property or equipment owned by the conservation district. The notes may be issued payable from current funds or reasonably contemplated revenues, but the conservation district may not issue notes payable from funds derived from the state.

(c) Any note issued by a conservation district may be secured by a lien on the property or equipment to which the repairs, additions, or improvements are to be made if the property or equipment was not acquired from the state or with funds derived from the state. A note executed in connection with the purchase of real

property may be secured only by the purchased real property.

(d) A conservation district may not levy taxes.

(e) Debts incurred by a conservation district may not create a lien on the land of owners or occupiers of land in the district.

(f) As a condition to extending benefits to, or performing any work on, land in the conservation district not owned or controlled by the state or a state agency, a conservation district may:

(1) require contributions to the operation in services, materials, or another form; and

(2) require owners or occupiers of land to enter into and perform an agreement or covenant as to the permanent use of land that will tend to prevent or control soil erosion on that land.

Acts 1981, 67th Leg., p. 1472, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1989, 71st Leg., ch. 46, Sec. 1, eff. April 27, 1989.

Sec. 201.102. PREVENTIVE AND CONTROL MEASURES. A conservation district may carry out preventive and control measures within its boundaries, including engineering operations, methods of cultivation, growing of vegetation, changes in the use of land, and measures listed in Section 201.001(c) of this code. The conservation district may carry out the measures on any land that is owned by the state or a state agency with the cooperation of the agency administering and having jurisdiction of the land. If the land is owned by another person, the conservation district may carry out the measures on obtaining the consent of the owner or occupier or the necessary rights or interests in the land.

Acts 1981, 67th Leg., p. 1473, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.103. COOPERATION AND AGREEMENTS WITH OTHER ENTITIES. (a) A conservation district may cooperate or enter into an agreement with any other entity, including a state or federal agency or an owner or occupier of land within the conservation district, in the carrying on of erosion control and prevention operations in the conservation district as the directors consider necessary to advance the purposes of this chapter. Within the limits of appropriations made available to the conservation district by law, the conservation district may furnish financial or other aid in accordance with the

cooperative program or agreement.

(b) The directors of two or more conservation districts may cooperate with one another in the exercise of any power conferred by this chapter.

(c) The directors of a conservation district may invite the legislative body of a municipality or county located within or near the conservation district to designate a representative to advise and consult with the directors on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.

(d) A state agency that has jurisdiction over or administers state-owned land in a conservation district, or a county or other subdivision of this state that has jurisdiction over or administers other publicly owned land in a conservation district, shall cooperate to the fullest extent with the directors of the conservation district in the effectuation of programs and operations undertaken by the conservation district under this chapter. The state agency, county, or subdivision shall provide the directors free access to enter and perform work on that land, and a land-use regulation adopted under Subchapter F of this chapter has the force and effect of law over that land and shall be observed by the entity administering the land.

Acts 1981, 67th Leg., p. 1473, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.104. ACQUISITION, ADMINISTRATION, AND SALE OF REAL OR PERSONAL PROPERTY. A conservation district may obtain options on or acquire in any manner, including purchase, exchange, lease, gift, grant, bequest, or devise, any real or personal property or rights or interests in real or personal property. In addition, the conservation district may:

(1) maintain, administer, or improve the property;

(2) receive income from the property and expend that income in carrying out this chapter; or

(3) sell, lease, or otherwise dispose of the property or interests in the property in furtherance of this chapter.

Acts 1981, 67th Leg., p. 1474, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.105. ACQUISITION, ADMINISTRATION, AND SALE OF

MATERIALS AND EQUIPMENT. (a) A conservation district may purchase machinery, equipment, seed, seedlings, fertilizer, fish for stocking farm ponds, or other supplies or conservation materials essential for the purposes of a conservation district program and make them available to owners and occupiers of land in the conservation district. The conservation district shall provide for maintaining, insuring, storing, and repairing the machinery and equipment.

(b) The district may charge a fee for the use of machinery and equipment owned by the district that is calculated to pay the costs of deterioration and replacement of the machinery and equipment.

(c) A conservation district may make any purchase of machinery or equipment through the comptroller under the terms and rules provided by law for purchases by the state or political subdivisions.

(d) A conservation district may charge persons who own or occupy small amounts of land nominal amounts for projects benefiting them if the directors determine it to be in the interest of the general welfare.

(e) A conservation district may sell on open bids any machinery or equipment considered obsolete or having served its purpose. The funds earned or acquired by a conservation district from a source other than the state or earned or acquired from the operation or sale of machinery or equipment acquired from a source other than the state shall be deposited in a trust fund account of the conservation district and used for purposes considered by the directors to be in the best interest of the conservation district.

(f) A conservation district shall use proceeds from the sale of any fertilizer, seed, seedlings, fish for stocking farm ponds, or other supplies or conservation materials to reimburse the conservation district for the costs of the materials and administration of the program and may fix the sale prices accordingly.

Acts 1981, 67th Leg., p. 1474, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 575, ch. 118, Sec. 1, eff. May 17, 1983.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.82, eff. September 1, 2007.

Sec. 201.106. CONSTRUCTION AND MAINTENANCE OF STRUCTURES. A conservation district may construct, improve, and maintain any structure necessary or convenient for the performance of an operation authorized by this chapter.

Acts 1981, 67th Leg., p. 1475, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.107. CONSERVATION PLANS AND INFORMATION. (a) A conservation district may develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the conservation district. In as much detail as possible, the plans shall specify the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, methods of cultivation, growing of vegetation, cropping programs, tillage practices, and changes in the use of land.

(b) A conservation district may publish the comprehensive plans and bring them to the attention of owners and occupiers of land in the conservation district and may demonstrate, publish, or otherwise make available to those owners and occupiers any pertinent information relating to legumes, cover crops, seeding, tillage, land preparation, and management of grasses, seed, legumes, and cover crops, and the eradication of noxious growth under good conservation practices.

Acts 1981, 67th Leg., p. 1475, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.108. ASSUMPTION OF GOVERNMENT PROJECTS; ACCEPTANCE OF GOVERNMENT GRANTS. (a) A conservation district may take over, by purchase, lease, or other method, and administer any soil conservation, erosion control, or erosion prevention project located within its boundaries and undertaken by the federal government, the state, or a state or federal agency.

(b) A conservation district may act as agent for the federal government, the state, or a state or federal agency in:

(1) managing a soil conservation, erosion control, or erosion prevention project within the boundaries of the conservation district; or

(2) acquiring, constructing, operating, or administering a

soil conservation, erosion control, or erosion prevention project within the boundaries of the conservation district.

(c) A conservation district may accept a donation, gift, or contribution in money, materials, services, or other form from the federal government, the state, or a state or federal agency and use and expend the donation, gift, or contribution in carrying out its operations.

Acts 1981, 67th Leg., p. 1475, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER F. LAND-USE REGULATION

Sec. 201.121. REGULATORY POWERS; PETITION FOR ADOPTION. (a) If petitioned by 50 or more eligible voters in the conservation district, the directors of a conservation district may propose an ordinance governing the use of land within the conservation district in the interest of conserving soil and soil resources and preventing and controlling soil erosion.

(b) An ordinance adopted under this subchapter may:

(1) require the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) require observance of particular methods of cultivation, including:

(A) contour cultivating, contour furrowing, lister furrowing, or strip cropping;

(B) planting, sowing, or seeding land with water-conserving and erosion-preventing plants, trees, or grasses; and

(C) forestations and reforestations;

(3) specify cropping programs and tillage practices to be observed;

(4) require the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; or

(5) provide other means, measures, operations, or programs that may assist conservation of soil resources or prevent or control soil erosion in the conservation district, having due regard for the legislative determinations made in Section 201.001 of this code.

(c) Land-use regulations must be uniform throughout the conservation district, except that the directors may classify land in

the conservation district according to relevant factors, including soil type, degree of slope, degree of erosion threatened or existing, or cropping or tillage practices in use. The land-use regulations may vary with the type or class of land affected, but must be uniform as to all land within the type or class.

Acts 1981, 67th Leg., p. 1476, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.122. HEARING. The directors of a conservation district may conduct public hearings and public meetings on proposed land-use regulations as necessary to assist the directors in the adoption of an ordinance.

Acts 1981, 67th Leg., p. 1476, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.123. ELECTION. (a) The directors may not adopt an ordinance prescribing land-use regulations unless adoption of the ordinance is approved by at least 90 percent of the eligible voters voting in an election under this section. If the voters approve the ordinance by that percentage, the directors shall adopt the ordinance.

(b) The directors shall give notice of the election that either recites the contents of the proposed ordinance or states where copies of the proposed ordinance may be examined. The directors shall make copies of the proposed ordinance available for public inspection during the period between publication of notice and the election.

(c) The ballot for the election shall be printed to provide for voting for or against the proposition: "Approval of the proposed Ordinance No. _____, prescribing land-use regulations for conservation of soil and prevention of erosion."

(d) The directors shall adopt rules governing the conduct of the election, supervise the election, and announce the result.

Acts 1981, 67th Leg., p. 1476, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.124. EFFECT OF ORDINANCE. An ordinance adopted under this subchapter has the force and effect of law in the conservation district and is binding on all owners or occupiers of land in the

conservation district.

Acts 1981, 67th Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.125. DISTRIBUTION OF COPIES OF ORDINANCE. The directors shall print copies of each ordinance prescribing land-use regulations and make those copies available to owners and occupiers of land in the conservation district.

Acts 1981, 67th Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.126. AMENDMENT OR REPEAL OF ORDINANCE. (a) An owner or occupier of land in a conservation district may at any time file a petition with the directors requesting the amendment, supplementation, or repeal of land-use regulations prescribed by ordinance.

(b) Land-use regulations prescribed by ordinance may be amended, supplemented, or repealed in accordance with the procedure prescribed by this subchapter for adoption of an ordinance, except that an ordinance may be suspended or repealed on majority vote of the eligible voters voting in the election.

Acts 1981, 67th Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.127. FREQUENCY OF ELECTIONS. An election on the adoption, amendment, supplementation, or repeal of land-use regulations may not be held more often than once every six months.

Acts 1981, 67th Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.128. ENFORCEMENT. (a) The directors are entitled to go upon any land in the conservation district to determine if land-use regulations adopted under this subchapter are being observed.

(b) If the directors find that provisions of land-use regulations prescribed by ordinance are not being observed on particular land and that the nonobservance tends to increase erosion on that land and is interfering with the prevention or control of

erosion on other land in the conservation district, the directors may bring suit in a court of competent jurisdiction against the occupier of the land. If the occupier of the land is not the owner, the owner shall be joined as a party defendant. The petition to the court may request that the court:

(1) require the defendant to perform the work, operations, or avoidances within a reasonable time;

(2) order that if the defendant fails to perform, the directors may go upon the land and perform the work or other operations or otherwise bring the condition of the land into conformity with the land-use regulations; and

(3) order that the directors recover their costs and expenses, with interest, from the defendant.

(c) The petition to the court must be verified and must:

(1) set forth the adoption of the ordinance prescribing the land-use regulations;

(2) set forth the failure of the defendant to observe the regulations and to perform the particular work, operations, or avoidances required by the regulations; and

(3) state that the nonobservance tends to increase erosion on that land and is interfering with the prevention or control of erosion on other land in the conservation district.

(d) On presentation of the petition, the court shall cause process to be issued against the defendant and shall hear the case. If it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as the court directs and to report the evidence to the court with findings of fact and conclusions of law. The findings and conclusions of a referee constitute part of the proceedings on which the court may make its determination. The court may dismiss the petition or may:

(1) require the defendant to perform the work, operations, or avoidances;

(2) order that, on the failure of the defendant to initiate performance within a time specified in the order of the court and to perform to completion with reasonable diligence, the directors may enter on the land involved and perform the work or operation or otherwise bring the condition of the land into conformity with the regulations; and

(3) order that the directors recover their costs and

expenses, with interest.

(e) The court shall retain jurisdiction of the case until after the work has been completed. If the work is performed by the directors under the order of the court, the directors, after completion of the work, may file a petition with the court stating the costs and expenses sustained by them in the performance of the work and seeking judgment for those costs and expenses, with interest. The court may enter judgment for the amount of the costs and expenses, with interest, and for the costs of suit, including a reasonable attorney's fee fixed by the court, but the total charge to a defendant for work done by the directors or anyone under the directors may not exceed in any one year an amount equal to 10 percent of the assessed valuation of the land for state and county purposes.

(f) A judgment under Subsection (e) of this section shall be collected in the same manner provided by Chapter 202 of this code for the collection of assessments in wind erosion conservation districts.

Acts 1981, 67th Leg., p. 1477, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.129. BOARD OF ADJUSTMENT. (a) If the directors of a conservation district adopt an ordinance prescribing land-use regulations, the directors by ordinance shall provide for the establishment of a board of adjustment organized in accordance with this section.

(b) A board of adjustment is composed of three members appointed by the state board with the advice and approval of the directors of the conservation district for which they are appointed.

(c) Except as provided for the initial board, members of a board of adjustment serve for staggered terms of two years with the terms of one or two members expiring every other year. In making initial appointments to a board of adjustment, the state board shall designate one or two members to serve a term of one year with the remaining member or members serving for a term of two years.

(d) Following notice and a hearing, a member of a board of adjustment may be removed, but only for neglect of duty or malfeasance in office. The state board and the directors of the conservation district for which the board is appointed shall conduct removal hearings jointly.

(e) A vacancy on a board of adjustment is filled for the unexpired term in the manner provided for the original appointment.

(f) A member of the state board or a director of the conservation district for which a board of adjustment is appointed is ineligible for appointment to the board of adjustment for that conservation district during the member's or director's tenure in office.

(g) Members of a board of adjustment are entitled to compensation for services of $3 a day for time spent on work of the board. The state board shall pay that compensation from appropriations made for that purpose for not more than 10 days each year.

(h) The directors of the conservation district for which the board of adjustment is appointed shall pay the necessary administrative and other expenses of operation incurred by the board on presentation of a certificate of the chairman of the board of adjustment.

Acts 1981, 67th Leg., p. 1478, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.130. PROCEDURES OF BOARD OF ADJUSTMENT. (a) A board of adjustment shall adopt rules to govern its proceedings that are consistent with this chapter and the land-use regulations adopted for the conservation district.

(b) A board of adjustment shall designate a chairman from among its members and may change that designation from time to time.

(c) A board of adjustment shall meet at the call of the chairman and at other times determined by the board.

(d) The chairman of the board of adjustment, or the chairman's designee as acting chairman from among the board's members, may administer oaths and compel the attendance of witnesses.

(e) All meetings of a board of adjustment are open to the public.

(f) A board of adjustment shall keep a full and accurate record of all proceedings, of all documents filed with the board, and of all orders entered. The record is public information and shall be filed in the office of the board of adjustment.

Acts 1981, 67th Leg., p. 1479, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.131. PETITION FOR VARIANCE. (a) An owner or occupier of land within a conservation district may petition the board of adjustment of that conservation district to authorize a variance from the terms of land-use regulations in the application of those regulations to land owned or occupied by the petitioner.

(b) A petition for a variance must allege that there are great practical difficulties or unnecessary hardships in the manner in which the land-use regulations require the petitioner to carry out the strict letter of those regulations.

(c) A petitioner for a variance shall serve copies of the petition on the chairman of the directors of the conservation district in which the petitioner's land is located and on the chairman of the state board.

Acts 1981, 67th Leg., p. 1479, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.132. HEARING ON VARIANCE PETITION. (a) After receiving a petition for a variance, a board of adjustment shall schedule a hearing on the petition and give notice of that hearing.

(b) The directors of the conservation district and the members of the state board are entitled to appear and be heard at a hearing on a petition for a variance.

(c) Any owner or occupier of land within the conservation district who objects to the granting of the variance sought may intervene and become a party to the proceedings.

(d) A party to a hearing on a petition for a variance may appear in person or by agent or attorney.

Acts 1981, 67th Leg., p. 1479, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.133. GRANTING OF VARIANCE. (a) If, on the basis of the facts presented at a hearing on a petition for a variance, the board of adjustment determines that there are great practical difficulties or unnecessary hardships in the manner of applying the strict letter of any land-use regulation on the land of the petitioner, the board shall record that determination and make and record findings of fact as to the specific conditions that establish the difficulties or hardships.

(b) On the basis of the board's determinations and findings

under Subsection (a) of this section, the board of adjustment by order may authorize a variance from the land-use regulations that will:

(1) relieve the great practical difficulties or unnecessary hardships;

(2) not be contrary to the public interest;

(3) observe the spirit of the land-use regulations;

(4) secure the public health, safety, and welfare; and

(5) do substantial justice.

Acts 1981, 67th Leg., p. 1480, ch. 388, Sec. 1, eff. Sept. 1, 1981.

SUBCHAPTER G. POWERS AND DUTIES OF OTHER GOVERNMENTAL SUBDIVISIONS

Sec. 201.151. USE OF COUNTY MACHINERY AND EQUIPMENT. (a) A county may employ or permit to be employed in soil conservation and the prevention of soil waste through erosion, any county machinery, including road machinery or county road equipment. Before employing the machinery or equipment or permitting it to be employed, the commissioners court must determine that the machinery or equipment is not demanded for building or maintaining the roads of the county and must enter that determination in the minutes of the court. The commissioners court shall provide for compensation to be paid for employment of the machinery or equipment and for that compensation to be paid into the county road fund or the road fund of a defined conservation district or authorized subdivision in the county.

(b) In the public service of conserving the soil fertility of the land of the county, the commissioners court may cooperate with the landowners and taxpayers of the county in all judicious efforts for the preservation of the productiveness of the soil from avoidable waste and loss of productiveness of agricultural crops necessary to the public welfare. In doing that, the county may permit the use of available machinery and equipment for those purposes by written contract, under which the county is to receive compensation from the landowner or taxpayer.

(c) The compensation under a contract under Subsection (b) of this section must be paid on a uniform basis considered equitable and proper by the commissioners court. The compensation shall be paid into the road and bridge fund of the county. The commissioners court may provide for the payments from landowners or taxpayers to be paid

in equitable amounts and intervals when county taxes are collected.

(d) The commissioners court or a representative of the commissioners court may not go on the land of any landowner to improve, terrace, protect, or ditch the land until requested to do so in writing by the owner of the land. The commissioners court may not be required to do that work unless the court determines that the work is of public benefit and elects to do the work.

(e) In any county with a population of not less than 22,000 or more than 23,000, not less than 60,000 nor more than 80,000, or not less than 290,000 nor more than 360,000, the commissioners court by order entered in its minutes may rent or let directly to a landowner in the county any machinery or equipment, including a tractor or a grader, for use on land situated in the county in the construction of terraces, dikes, and ditches for the purpose of soil conservation or soil erosion prevention or for the purpose of constructing water tanks and reservoirs. The landowner and the commissioners court shall agree on the amount to be paid by the landowner to the county for the use of the machinery or equipment and that amount shall be specified in the order renting or letting the machinery or equipment.

Acts 1981, 67th Leg., p. 1480, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 201.152. CONTRACTS FOR FLOOD CONTROL AND DRAINAGE. (a) A county, city, water control and improvement district, drainage district, or other political subdivision may contract with a conservation district for the joint acquisition of rights-of-way or for joint construction or maintenance of dams, flood retention structures, canals, drains, levees, or other improvements for flood control and drainage related to flood control or for making the necessary outlets and maintaining them. The contracts and agreements may contain terms, provisions, and details that the governing bodies of the respective political subdivisions determine to be necessary under the facts and circumstances.

(b) A county, city, water control and improvement district, drainage district, or other political subdivision may contribute funds to a conservation district for the construction or maintenance of canals, dams, flood retention structures, drains, levees, and other improvements for flood control and drainage related to flood control or for making the necessary outlets and maintaining them.

The political subdivision may contribute the funds regardless of whether title to the property is vested in the State of Texas or a conservation district if the work to be accomplished is for the mutual benefit of the donor and the agency or political subdivision having title to the property on which the improvements are located.

(c) A county, city, water control and improvement district, drainage district, or other political subdivision may contribute funds to a conservation district for a specific purpose authorized by this chapter or for use in the exercise of any power or duty conferred on a conservation district by this chapter that will benefit the contributing district or political subdivision. All or part of any funds contributed by a county, city, water control and improvement district, drainage district, or other political subdivision to a conservation district may be used by the conservation district to match funds received from the state.

(d) For the purposes of this section, a county may expend permanent improvement funds or flood control funds levied in accordance with Article VIII, Section 1-a, of the Texas Constitution and Chapter 464, Acts of the 51st Legislature, Regular Session, 1949 (Article 7048a, Vernon's Texas Civil Statutes). A political subdivision other than a county may expend the appropriate funds of the subdivision for the purposes of this section.

Acts 1981, 67th Leg., p. 1480, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 198, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER H. TECHNICAL ASSISTANCE PROGRAM FOR SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES

Sec. 201.201. CREATION OF PROGRAM. A technical assistance program for soil and water conservation land improvement measures is created and shall be administered by the State Soil and Water Conservation Board.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 3.02, eff. Nov. 5, 1985.

Sec. 201.202. USE OF FUNDS. (a) The State Soil and Water Conservation Board shall use money from the agricultural soil and water conservation fund for providing technical assistance to landowners and operators for soil and water conservation land

improvement measures and soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts.

(b) The board shall designate priorities among the various land improvement measures, including:

(1) brush control and other water supply enhancement activities;

(2) forest improvement measures;

(3) returning erosive cropland to pasture and other practices that maximize water conservation;

(4) increasing water use efficiency;

(5) increasing water quality;

(6) reducing erosion; and

(7) maximizing public benefits.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 3.02, eff. Nov. 5, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 7, eff. September 1, 2011.

Sec. 201.203. DESIGNATION OF LOCAL DISTRICTS. (a) The State Soil and Water Conservation Board shall designate particular soil and water conservation districts to administer certain programs.

(b) Before a local soil and water conservation district is designated by the State Soil and Water Conservation Board, the district must provide evidence to the State Soil and Water Conservation Board that it is able to provide and to supervise necessary technical assistance to landowners and operators within its jurisdiction.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 3.02, eff. Nov. 5, 1985.

Sec. 201.204. RULES. The State Soil and Water Conservation Board may adopt necessary rules to carry out this subchapter.

Added by Acts 1985, 69th Leg., ch. 133, Sec. 3.02, eff. Nov. 5, 1985.

SUBCHAPTER I. COST-SHARE ASSISTANCE PROGRAM FOR SOIL AND WATER

CONSERVATION LAND IMPROVEMENT MEASURES

Sec. 201.301. CREATION OF PROGRAM. The state board shall administer a cost-share assistance program for soil and water conservation land improvement measures.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.302. USE OF FUNDS. (a) The state board may provide cost-share assistance to landowners or operators for the installation of soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, or protecting water quality.

(b) The state board may employ and contract with and provide for the compensation of personnel and may take any other action necessary to implement this subchapter.

(c) The state board may reimburse a conservation district for the reasonable costs the district incurs in administering this subchapter.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.303. ALLOCATION OF FUNDS. (a) The state board may allocate funds under this subchapter among particular soil and water conservation land improvement measures or among areas of the state for each of the purposes provided by Section 201.302 of this code.

(b) The state board may allocate funds among conservation districts to pay the state's share of the costs of installing eligible soil and water conservation land improvement measures on agricultural lands within the districts and may adjust allocations as needs change in order to achieve the most efficient use of funds.

(c) A conservation district may submit a request for an allocation of cost-share assistance funds to the state board. A request must be submitted in the manner provided by the state board.

(d) The state board shall set priorities for allocation of cost-share assistance funds consistent with the purposes provided by Section 201.302 of this code. The state board may consider local priorities and needs in establishing priorities. The state board shall:

(1) give greater weight among the priorities set under this

subsection to allocation of funds to owners of land in the priority areas identified under Section 201.026(g); and

(2) keep records of financial incentive disbursements to owners of land in the priority areas identified under Section 201.026(g).

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993. Amended by Acts 2001, 77th Leg., ch. 1095, Sec. 14, eff. Sept. 1, 2001.

Sec. 201.304. ELIGIBILITY FOR COST-SHARE ASSISTANCE. As a condition for assistance under this subchapter, the state board may require that a person:

(1) own or operate agricultural land within the boundaries of the conservation district providing cost-share assistance;

(2) have a conservation plan approved by the conservation district covering the land for which a soil and water conservation land improvement measure is proposed; and

(3) include in the conservation plan practices for which cost-share assistance is proposed.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.305. ELIGIBLE SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES. (a) Soil and water conservation land improvement measures eligible for cost-share assistance shall be determined by the state board and must be consistent with the purposes provided by Section 201.302 of this code. The state board may consider local priorities and needs in determining eligible measures.

(b) Each conservation district receiving an allocation of cost-share assistance funds shall designate the soil and water conservation land improvement measures that are eligible for cost-share assistance within its boundaries, subject to approval by the state board.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.306. APPLICATION FOR COST-SHARE ASSISTANCE. An application for cost-share assistance may be made on forms provided by the state board or by other means approved by the state board.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.307. APPROVAL OF APPLICATION. (a) A conservation district may approve an application for cost-share assistance if the soil and water conservation land improvement measure is consistent with the purposes provided by Section 201.302 of this code and the priorities established by the state board under Section 201.303 of this code.

(b) A conservation district may not approve applications for cost-share assistance funds in excess of the funds allocated to the conservation district by the state board.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.308. COST-SHARE RATES. (a) The state board shall establish the cost-share rates for all eligible soil and water conservation land improvement measures.

(b) The state board may not bear more than 75 percent of the cost of a soil and water conservation land improvement measure.

(c) A person may not receive cost-share assistance for a soil and water conservation land improvement measure if the person is simultaneously receiving cost-share assistance for the measure from another source.

(d) The state board may grant an exception to Subsection (b) of this section if the state board finds the higher share is necessary to obtain adequate implementation of a certain soil and water conservation land improvement measure.

(e) The state board may grant an exception to Subsection (c) of this section if the state board finds that participation with another cost-share assistance program will:

(1) enhance the efficiency and effectiveness of a soil and water conservation land improvement measure; and

(2) lessen the state's financial commitment to the soil and water conservation land improvement measure.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.309. STANDARDS AND SPECIFICATIONS. The state board shall establish standards and specifications for soil and water conservation land improvement measures eligible for cost-share assistance.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.310. COST-SHARE PAYMENTS. (a) The state board shall make each cost-share assistance payment directly to an eligible person.

(b) Before making a payment to an eligible person for a soil and water conservation land improvement measure, the state board may require certification by the conservation district in which the measure has been installed to determine if the measure has been completely installed and satisfies the standards and specifications established by the state board.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

Sec. 201.311. DESIGNATION OF LOCAL DISTRICTS. The state board may designate one or more conservation districts to administer this subchapter locally.

Added by Acts 1993, 73rd Leg., ch. 54, Sec. 2, eff. April 29, 1993.

CHAPTER 203. WATER SUPPLY ENHANCEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Soil and Water Conservation Board.

(2) "District" means a soil and water conservation district created under Chapter 201 of this code.

(3) "District board" means the board of directors of a soil and water conservation district created under Chapter 201 of this code.

(4) "Brush control" means:

(A) the selective control, removal, or reduction of noxious brush such as mesquite, prickly pear, salt cedar, or other phreatophytes that consume water to a degree that is detrimental to water conservation; and

(B) the revegetation of land on which this brush has been controlled.

(5) "Area" means a sub-basin or other portion of land within a project.

(6) "Project" means a watershed or portion of a watershed in which water supply enhancement activities are performed.

(7) "Proposal" means a request submitted by a soil and water conservation district or other political subdivision for state funds to be used in a watershed or portion of a watershed for water supply enhancement activities.

(8) "Water supply enhancement" includes brush control.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(o), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 12(a), eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 9, eff. September 1, 2011.

Sec. 203.002. PURPOSE OF PROGRAM. The water supply enhancement program shall be implemented, administered, operated, and financed as provided by this chapter. The purpose of the water supply enhancement program is to increase available surface water and groundwater through:

(1) selective control, removal, or reduction of noxious brush species that are detrimental to water conservation; and

(2) revegetation of land on which noxious brush has been controlled, removed, or reduced.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 10, eff. September 1, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 203.011. AUTHORITY OF BOARD. The board has jurisdiction over and, with the assistance of local districts, shall administer the water supply enhancement program under this chapter. This chapter does not limit the board's authority to control, remove, or reduce brush under any program the board administers under Chapter 201.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(e), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 6, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 11, eff. September 1, 2011.

Sec. 203.012. RULES. The board, after consulting with local districts, shall adopt reasonable rules that are necessary to carry out this chapter.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(e), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 6, eff. Sept. 1, 2003.

Sec. 203.013. AUTHORITY OF DISTRICTS. Each district may carry out the responsibilities provided by Subchapter D as delegated by the board.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(e), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 6, eff. Sept. 1, 2003.

Sec. 203.014. PERSONNEL. The board may employ or contract with any person necessary to assist the board or a district to carry out this chapter.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.

Sec. 203.015. EXPENDITURES. In addition to any other expenditures authorized by this subchapter, the board may make expenditures provided by the General Appropriations Act.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.

Sec. 203.016. CONSULTATION. The State Soil and Water Conservation Board shall consult with:

(1) the Texas Water Development Board in regard to the effects of the water supply enhancement program on water quantity;

(2) the department in regard to the effects of the water supply enhancement program on agriculture; and

(3) the Parks and Wildlife Department in regard to the effects of the water supply enhancement program on fish and wildlife.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(f), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 12, eff. September 1, 2011.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF BOARD

Sec. 203.051. STATE PLAN. (a) The board shall prepare and adopt a state water supply enhancement plan that includes a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem.

(b) The plan adopted under this section must list the goals the board establishes under Section 201.029 for the water supply enhancement program. These goals must include:

(1) a goal describing the intended use of a water supply enhanced or conserved by the program, such as agricultural purposes or drinking water purposes; and

(2) a goal describing the populations that the water supply enhancement program will target.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(g), eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 983, Sec. 6, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 13, eff. September 1, 2011.

Sec. 203.052. NOTICE AND HEARING. (a) Before the board adopts the plan under Section 203.051 of this code, the board shall call and hold a hearing to consider a proposed plan.

(b) Not less than 30 days before the date the hearing is to be held, the board shall mail written notice of the hearing to each district in the state. The notice must:

(1) include the date and place for holding the hearing;

(2) state the purpose for holding the hearing; and

(3) include instructions for each district to submit written comments on the proposed plan.

(c) At the hearing, representatives of a district and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The board shall:

(1) enter any written comments received on the proposed plan into the record of the hearing; and

(2) consider all written comments and testimony before taking final action on the proposed plan.

(d) After the conclusion of the hearing, the board shall consider the testimony, including the information and suggestions made at the hearing and in written comments, and after making any changes in the proposed plan that it finds necessary, the board shall adopt the plan.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(h), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 2.004, eff. September 1, 2011.

Sec. 203.053. CRITERIA FOR ACCEPTING AND PRIORITIZING WATER SUPPLY ENHANCEMENT PROJECTS. (a) The board shall adopt rules establishing:

(1) criteria for accepting project proposals; and

(2) a system to prioritize projects for each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest projected water yield.

(b) The criteria required by Subsection (a)(1) must include a requirement that each proposal state the projected water yield of the proposed project, as modeled by a person with expertise in hydrology, water resources, or another technical area pertinent to the evaluation of water supply.

(c) The board shall consult with stakeholders, including hydrologists and representatives from soil and water conservation districts, to develop by rule standard methods of reporting the projected water yield under Subsection (b).

(d) In prioritizing projects under Subsection (a)(2), the board shall consider:

(1) the need for conservation of water resources within the territory of the project, based on the state water plan adopted under Section 16.051, Water Code;

(2) projected water yield of areas of the project, based on soil, slope, land use, types and distribution of trees, brush, and other vegetative matter, and proximity of trees, brush, and other vegetative matter to rivers, streams, and channels;

(3) any method the project may use to control brush;

(4) cost-sharing contract rates within the territory of the project;

(5) the location and size of the project;

(6) the budget of the project and any associated requests for grant funds submitted under this title;

(7) the implementation schedule of the project; and

(8) the administrative capacities of the board and the entity that will manage the project.

(e) In prioritizing projects under Subsection (a)(2), the board may consider:

(1) scientific research on the effects of brush removal on water supply; and

(2) any other criteria that the board considers relevant to assure that the water supply enhancement program can be most effectively, efficiently, and economically implemented.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.

Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(i), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 14, eff. September 1, 2011.

Sec. 203.054. AMENDING PLAN. At least every two years the board shall review and may amend the plan to take into consideration changed conditions. Amendments to the plan shall be made in the manner provided by this chapter for adopting the original plan.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.

Sec. 203.055. APPROVED METHODS FOR BRUSH CONTROL. (a) The board shall study and must approve all methods used to control brush under this chapter considering the overall impact of the project.

(b) The board may approve a method for use under the cost-sharing program provided by Subchapter E if the board finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat;

(4) will maintain topsoil to prevent erosion or silting of any river or stream; and

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, and livestock and wildlife.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(j), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 8, eff. Sept. 1, 2003.

Sec. 203.056. REPORT. (a) Before January 31 of each year, the board shall submit to the governor, the speaker of the house, and the lieutenant governor a report of the activities of the water supply enhancement program during the immediately preceding calendar year,

including a comprehensive analysis of the program's effectiveness and a report on program participant compliance with plans created under Section 203.162.

(b) The board may make copies of this report available on request to any person and may charge a fee for each report that will allow the board to recover its costs for printing and distribution.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 15, eff. September 1, 2011.

Sec. 203.057. FEASIBILITY STUDIES. (a) The board shall establish a process for providing to persons submitting project proposals assistance in locating a person with expertise in hydrology, water resources, or another technical area pertinent to the evaluation of water supply to conduct a feasibility study for a project using a water yield model as described by Section 203.053(b).

(b) The board may:

(1) dedicate a portion of the money appropriated to the board that it considers appropriate to fund part or all of a feasibility study under this section; and

(2) establish procedures to distribute the money under Subdivision (1).

(c) To receive funding for a feasibility study under Subsection (b), a person must submit to the board an application for funding that includes a statement of the project's anticipated impact on water resources.

Added by Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 16, eff. September 1, 2011.

SUBCHAPTER D. POWERS AND DUTIES OF DISTRICTS

Sec. 203.101. GENERAL AUTHORITY. Each district may administer the aspects of the water supply enhancement program within the jurisdiction of that district.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(k), eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 983, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 17, eff. September 1, 2011.

Sec. 203.102. PROVIDE INFORMATION RELATING TO PROGRAM. The board shall prepare and distribute information to each district relating generally to the water supply enhancement program and concerning the procedures for preparing, filing, and obtaining approval of an application for cost sharing under Subchapter E.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 18, eff. September 1, 2011.

Sec. 203.103. ACCEPTANCE AND COMMENT ON APPLICATION. (a) Each district may accept for transmission to the board applications for cost sharing under Subchapter E of this chapter and may examine and assist the applicant in assembling the application in proper form before the application is submitted to the board.

(b) Before a district submits an application to the board, it shall examine the application to assure that it complies with rules of the board and that it includes all information and exhibits necessary for the board to pass on the application.

(c) At the time that the district examines the application, it shall prepare comments and recommendations relating to the application and the district board may provide comments and recommendations before they are submitted to the board.

(d) After reviewing the application, the district board shall submit to the board the application and the comments and recommendations.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.

Sec. 203.104. SUPERVISION OF COST-SHARING CONTRACTS. (a) Each district on behalf of the board may inspect and supervise cost-sharing contracts within its jurisdiction in which state money is

provided under Subchapter E.

(b) Each district board exercising the duties under Subsection (a) of this section shall periodically report to the board relating to this inspection and supervision in the manner provided by board rules.

(c) The board may direct a district to manage any problem that arises under a cost-sharing contract for water supply enhancement in that district and to report to the board.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 19, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 20, eff. September 1, 2011.

SUBCHAPTER E. COST SHARING FOR WATER SUPPLY ENHANCEMENT

Sec. 203.151. CREATION OF COST-SHARING PROGRAM. As part of the water supply enhancement program, a cost-sharing program is created to be administered under this chapter and rules adopted by the board.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 22, eff. September 1, 2011.

Sec. 203.154. LIMIT ON COST-SHARING PARTICIPATION. (a) Not more than 70 percent of the total cost of a single cost-sharing contract may be made available as the state's share in cost sharing.

(b) A person is not eligible to participate in or to receive money from the state water supply enhancement program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.

(c) The board may grant an exception to Subsection (b) if the board finds that joint participation of the state water supply enhancement program and any federal brush control program will:

(1) enhance the efficiency and effectiveness of the water supply enhancement program;

(2) lessen the state's financial commitment to the person

receiving money from the water supply enhancement program through a cost-sharing contract; and

(3) not exceed 80 percent of the total cost of the cost-sharing contract.

(d) A political subdivision of this state is eligible for cost sharing under the water supply enhancement program, provided that the state's share may not exceed 50 percent of the total cost of a single cost-sharing contract.

(e) Notwithstanding any other provision of this section, 100 percent of the total cost of a single cost-sharing contract on public lands may be made available as the state's share in cost sharing.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1999, 76th Leg., ch. 1386, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 200, Sec. 13(l), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 23, eff. September 1, 2011.

Sec. 203.156. APPLICATION FOR COST SHARING. A person, including a political subdivision of this state, that desires to participate with the state in the water supply enhancement program and to obtain cost-sharing participation by the state shall file an application for a cost-sharing contract with the district board in the district in which the land on which the contract is to be performed is located. The application must be in the form provided by board rules.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(m), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 24, eff. September 1, 2011.

Sec. 203.157. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application for cost sharing, the board shall consider:

(1) the location of the land that is subject to the cost-

sharing contract;

(2) the method of control the applicant will use;

(3) the plans for revegetation;

(4) the total cost of the contract;

(5) the amount of land to be included in the contract;

(6) whether the applicant is financially able to provide the applicant's share of the money for the project;

(7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;

(8) any comments and recommendations submitted by a local district, the department, the Texas Water Development Board, or the Parks and Wildlife Department; and

(9) any other pertinent information considered necessary by the board.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(m), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 25, eff. September 1, 2011.

Sec. 203.158. APPROVAL OF APPLICATION. The board may approve an application for cost sharing if, after considering the factors listed in Section 203.157 and any other relevant factors, the board finds:

(1) the owner of the land fully agrees to cooperate in the cost-sharing contract; and

(2) the method of eradication is a method approved by the board under Section 203.055.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 13(m), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 983, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 26, eff. September 1, 2011.

Sec. 203.160. CONTRACT FOR COST SHARING. (a) On approval of

an application for cost sharing by the board, the board or the governing board of the designated district shall negotiate cost-sharing contracts with the successful applicants in the project territory.

(b) The board or designated district board shall negotiate a contract with the successful applicant subject to:

(1) the conditions established by the board in approving the application;

(2) any specified instructions provided by the board; and

(3) board rules.

(c) On completion of the negotiations by the district board, it shall submit the proposed contract to the board for approval.

(d) The board shall examine the contract and if the board finds that the contract meets all the conditions of the board's resolution, instructions, and rules, it shall approve the contract and provide to the individual on faithful performance of the terms of the contract the money that constitutes the state's share of the project.

(e) The board may develop guidelines to allow partial payment of the state's share of a cost-sharing contract as certain portions or percentages of contracted work are completed, but state money may not be provided in advance for work remaining to be done.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 27, eff. September 1, 2011.

Sec. 203.161. ADMINISTRATION OF EXPENDITURES. The district board may administer expenditure of the state's share of the money required by a cost-sharing contract and shall report periodically to the board on the expenditure of those funds in the manner required by the board.

Added by Acts 1985, 69th Leg., ch. 655, Sec. 1, eff. Aug. 26, 1985.

Sec. 203.162. WATER SUPPLY ENHANCEMENT PLANS. (a) The board shall consult with each successful applicant for a cost-sharing contract to create a 10-year plan for the land that is subject to the contract to enhance the water supply in the area.

(b) A plan created under this section must include:

(1) provisions for brush control or other water supply enhancement activities;

(2) a provision for follow-up brush control;

(3) a provision requiring the landowner to limit the average brush coverage on the land that is subject to the contract to not more than five percent throughout the course of the 10-year plan; and

(4) periodic dates throughout the course of the 10-year plan on which the board will inspect the status of brush control on the land that is subject to the contract.

(c) A plan created under this section may not condition implementation of the provision for follow-up brush control on receipt of additional funding for the follow-up brush control from a state source other than the original cost-sharing contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 61 (H.B. 1808), Sec. 28, eff. September 1, 2011.

TITLE 8. PROTECTION AND PRESERVATION OF AGRICULTURAL OPERATIONS
CHAPTER 251. EFFECT OF NUISANCE ACTIONS AND GOVERNMENTAL REQUIREMENTS ON PREEXISTING AGRICULTURAL OPERATIONS

Sec. 251.001. POLICY. It is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or considered to be a nuisance.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Sec. 251.002. DEFINITIONS. In this chapter:

(1) "Agricultural operation" includes the following activities:

(A) cultivating the soil;

(B) producing crops for human food, animal feed, planting seed, or fiber;

(C) floriculture;
(D) viticulture;
(E) horticulture;
(F) silviculture;
(G) wildlife management;
(H) raising or keeping livestock or poultry; and
(I) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) "Governmental requirement" includes any rule, regulation, ordinance, zoning, or other requirement or restriction enacted or promulgated by a county, city, or other municipal corporation that has the power to enact or promulgate the requirement or restriction.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.
Amended by:
Acts 2005, 79th Leg., Ch. 18 (S.B. 734), Sec. 1, eff. May 3, 2005.

Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is a separate and independent established date of operation established as of the date of commencement of the expanded operation, and the commencement of expanded operation does not divest the agricultural operation of a previously established date of operation.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Sec. 251.004. NUISANCE ACTIONS. (a) No nuisance action may be brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed

substantially unchanged since the established date of operation. This subsection does not restrict or impede the authority of this state to protect the public health, safety, and welfare or the authority of a municipality to enforce state law.

(b) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) of this section is liable to the agricultural operator for all costs and expenses incurred in defense of the action, including but not limited to attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense.

(c) This section does not affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of an agricultural operation.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Sec. 251.005. EFFECT OF GOVERNMENTAL REQUIREMENTS. (a) For purposes of this section, the effective date of a governmental requirement is the date on which the requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation. The recodification of a municipal ordinance does not change the original effective date to the extent of the original requirements.

(b) A governmental requirement of a political subdivision of the state other than a city:

(1) applies to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;

(2) does not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement; and

(3) applies to an agricultural operation if the governmental requirement was in effect and was applicable to the

operation prior to the effective date of this chapter.

(c) A governmental requirement of a city does not apply to any agricultural operation situated outside the corporate boundaries of the city on the effective date of this chapter. If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of the city do not apply to the agricultural operation unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of:

(1) explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, or traffic hazards; or

(2) discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code.

(c-1) A governmental requirement may be imposed under Subsection (c) only after the governing body of the city makes findings by resolution that the requirement is necessary to protect public health. Before making findings as to the necessity of the requirement, the governing body of the city must use the services of the city health officer or employ a consultant to prepare a report to identify the health hazards related to agricultural operations and determine the necessity of regulation and manner in which agricultural operations should be regulated.

(c-2) A governmental requirement of a city relating to the restraint of a dog that would apply to an agricultural operation under Subsection (c) does not apply to a dog used to protect livestock on property controlled by the property owner while the dog is being used on such property for that purpose.

(d) This section shall be construed to maintain, to the limited degree set forth in this section, the authority of a political subdivision under prior law over nonconforming uses but may not be construed to expand that authority.

(e) A governmental requirement of a political subdivision of the state does not apply to conduct described by Section 42.09(f), Penal Code, on an agricultural operation.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981. Amended by Acts 1995, 74th Leg., ch. 450, Sec. 1, eff.

Aug. 28, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 18 (S.B. 734), Sec. 2, eff. May 3, 2005.
Acts 2009, 81st Leg., R.S., Ch. 88 (H.B. 205), Sec. 1, eff. May 23, 2009.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.22, eff. September 1, 2009.

Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute or a governmental requirement in effect at the time the improvement is constructed. Such an improvement does not constitute a nuisance.

(b) This section does not apply to an improvement that obstructs the flow of water, light, or air to other land. This section does not prevent the enforcement of a statute or governmental requirement to protect public health or safety.

(c) In this section:

(1) "Agricultural land" includes any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Tax Code.

(2) "Agricultural improvement" includes pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animal or aquatic life, for storage of produce or feed, or for storage or maintenance of implements.

Added by Acts 1997, 75th Leg., ch. 332, Sec. 1, eff. Sept. 1, 1997.

TITLE 9. WEATHER AND CLIMATE
CHAPTER 301. WEATHER MODIFICATION AND CONTROL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. DEFINITIONS. In this chapter:

(1) "Executive director" means the executive director of the Texas Department of Licensing and Regulation.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

(3) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(4) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

(5) "Weather modification and control program" means the research, development, licensing, and permitting and other associated activities to be administered by the Texas Department of Licensing and Regulation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS DEPARTMENT OF LICENSING AND REGULATION

Sec. 301.051. RULES. The Texas Department of Licensing and Regulation may adopt rules necessary to:

(1) exercise the powers and perform the duties under this chapter;

(2) establish procedures and conditions for the issuance of licenses and permits under this chapter; and

(3) establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the Texas Department of Licensing and Regulation considers necessary or desirable to minimize danger to health or property.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.052. STUDIES; INVESTIGATIONS; HEARINGS. The Texas Department of Licensing and Regulation may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.053. ADVISORY COMMITTEES. The Texas Department of Licensing and Regulation may establish advisory committees to advise the Texas Department of Licensing and Regulation and to make recommendations to the Texas Department of Licensing and Regulation concerning legislation, policies, administration, research, and other matters related to the duties, powers, or functions of the Texas Department of Licensing and Regulation under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.054. PERSONNEL. The executive director may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.055. MATERIALS AND EQUIPMENT. The Texas Department of Licensing and Regulation may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.056. INTERSTATE COMPACTS. The executive director may

represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.057. CONTRACTS AND COOPERATIVE AGREEMENTS. (a) The Texas Department of Licensing and Regulation may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The Texas Department of Licensing and Regulation may enter into cooperative agreements with the United States or any of its agencies, with counties and municipalities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) The Texas Department of Licensing and Regulation may represent the state, counties, municipalities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.058. PROMOTION OF RESEARCH AND DEVELOPMENT. (a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the Texas Department of Licensing and Regulation shall promote continuous research and development in:

(1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;

(2) the use of weather modification and control for agricultural, industrial, commercial, and other purposes; and

(3) the protection of life and property during research and operational activities.

(b) The Texas Department of Licensing and Regulation with approval of the executive director may conduct and may contract for research and development activities relating to the purposes of this section.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.059. GRANTS AND GIFTS. Subject to any limitations imposed by law, the Texas Department of Licensing and Regulation may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the Texas Department of Licensing and Regulation may spend the money for the administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.060. DISPOSITION OF LICENSE AND PERMIT FEES. The Texas Department of Licensing and Regulation shall deposit all license and permit fees in the state treasury.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

SUBCHAPTER C. LICENSES AND PERMITS

Sec. 301.101. LICENSE AND PERMIT REQUIRED. Except as provided by rule of the Texas Department of Licensing and Regulation under Section 301.102, a person may not engage in activities for weather modification and control:

(1) without a weather modification license and weather modification permit issued by the department; or

(2) in violation of any term or condition of the license or permit.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.102. EXEMPTIONS. (a) The Texas Department of Licensing and Regulation by rule, to the extent it considers exemptions practical, shall provide for exempting the following

activities from the license and permit requirements of this chapter:

(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

(2) laboratory research and experiments;

(3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and

(4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

(b) The Texas Department of Licensing and Regulation by rule may modify or revoke an exemption.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.103. ISSUANCE OF LICENSE. (a) The Texas Department of Licensing and Regulation, in accordance with the rules adopted under this chapter, shall issue a weather modification license to each applicant who:

(1) pays the license fee; and

(2) demonstrates, to the satisfaction of the Texas Department of Licensing and Regulation, competence in the field of meteorology that is reasonably necessary to engage in weather modification and control activities.

(b) If the applicant is an organization, the competence must be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.105. EXPIRATION DATE. Each original or renewal license expires at the end of the state fiscal year for which it was issued.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.106. RENEWAL LICENSE. At the expiration of the license period, the Texas Department of Licensing and Regulation shall issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.107. ISSUANCE OF PERMIT. (a) The Texas Department of Licensing and Regulation, in accordance with the rules adopted under this chapter and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area in which the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if governed by Subchapter D, may issue a weather modification permit to each applicant who:

(1) holds a valid weather modification license;

(2) pays the permit fee;

(3) publishes a notice of intention and submits proof of publication as required by this chapter; and

(4) furnishes proof of financial responsibility.

(b) The Texas Department of Licensing and Regulation shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.109. SCOPE OF PERMIT. A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The Texas Department of Licensing and Regulation may not issue a permit for a contracted operation unless it covers a continuous period not to exceed four years.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1,

2003.

Sec. 301.110. APPLICATION AND NOTICE OF INTENTION. Before undertaking any operation, a license holder must file an application for a permit and have a notice of intention published as required by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.111. CONTENT OF NOTICE. In the notice of intention, the applicant must include:

(1) the name and address of the license holder;

(2) the nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which and the approximate time during which the operation is to be conducted;

(4) the area that is intended to be affected by the operation; and

(5) the materials and methods to be used in conducting the operation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.112. PUBLICATION OF NOTICE. The notice of intention required under Section 301.110 must be published at least once a week for three consecutive weeks in a newspaper of general circulation in each county in which the operation is to be conducted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.113. PROOF OF PUBLICATION; AFFIDAVIT. The applicant shall file proof of the publication, together with the publishers' affidavits, with the Texas Department of Licensing and Regulation during the 15-day period immediately after the date of the last

publication.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.114. PROOF OF FINANCIAL RESPONSIBILITY. Proof of financial responsibility is made by showing to the satisfaction of the Texas Department of Licensing and Regulation that the license holder has the ability to respond in damages for liability that might reasonably result from the operation for which the permit is sought.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.115. MODIFICATION OF PERMIT. The Texas Department of Licensing and Regulation may modify the terms and conditions of a permit if:

(1) the license holder is first given notice and a reasonable opportunity for a hearing on the need for a modification; and

(2) it appears to the Texas Department of Licensing and Regulation that a modification is necessary to protect the health or property of any person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.116. SCOPE OF ACTIVITY. Once a permit is issued, the license holder shall confine the license holder's activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the Texas Department of Licensing and Regulation. The license holder shall comply with any terms and conditions of the permit as originally issued or as subsequently modified by the Texas Department of Licensing and Regulation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.117. RECORDS AND REPORTS. (a) A license holder shall keep a record of each operation conducted under a permit, showing:

(1) the method employed;

(2) the type of equipment used;

(3) the kind and amount of each material used;

(4) the times and places the equipment is operated;

(5) the name and mailing address of each individual, other than the license holder, who participates or assists in the operation; and

(6) other information required by the Texas Department of Licensing and Regulation.

(b) The Texas Department of Licensing and Regulation shall require written reports for each operation, whether the operation is exempt or conducted under a permit. A license holder shall submit a written report at the time and in the manner required by the Texas Department of Licensing and Regulation.

(c) All information on an operation shall be submitted to the Texas Department of Licensing and Regulation before it is released to the public.

(d) The reports and records in the custody of the Texas Department of Licensing and Regulation shall be kept open for public inspection.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

SUBCHAPTER D. ELECTION FOR APPROVAL OF PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION

Sec. 301.151. DEFINITIONS. (a) In this subchapter:

(1) "Operational area" means that area that joins the target area and is reasonably necessary to use in order to effectuate the purposes over the target area without affecting the land or landowners in the operational area.

(2) "Target area" means that area described by metes and bounds or other specific bounded description set out in the application for a permit.

(b) The Texas Department of Licensing and Regulation by rule

shall define hail suppression as used in this subchapter, using the most current scientifically accepted technological concepts.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.152. OPERATIONAL AREA. (a) No part of an operational area may be more than eight miles from the limits of the target area.

(b) The operational area must be described by metes and bounds or other specific bounded description and set out in the application for a permit.

(c) If the application for a permit does not describe the operational area, the Texas Department of Licensing and Regulation may designate an area located inside and up to eight miles from the limits of the target area described in the application as the operational area of the permit for the purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.153. DATE OF PERMIT ISSUANCE; PERMIT AREA. A permit may not be issued by the Texas Department of Licensing and Regulation before the end of the 30-day period immediately following the first publication of notice and then only in:

(1) those counties or parts of counties in the target area or operational area in which the majority of the qualified voters voting have approved or have not disapproved the issuance of a permit if an election has been held; or

(2) any county or part of a county in the target area or operational area if no petition for an election has been filed.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.154. ELIGIBLE VOTERS. (a) Persons eligible to vote in elections held under this subchapter include qualified voters in counties or parts of counties included in the target area or operational area.

(b) If the target area or operational area for a permit including authorization for hail suppression includes only part of a county, an election held under this subchapter may be held only in the election precincts that are included entirely within or are partially included in those areas, and only those qualified voters residing in an election precinct or precincts of the county included in the target area or operational area are eligible to sign a petition and to vote at an election under this subchapter. In computing the vote, only a majority of qualified voters residing in those areas and voting in the election is necessary to carry the proposition in that county.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.155. APPLICATION FOR PETITION SEEKING ELECTION. (a) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation.

(b) An application for a petition seeking an election to disapprove the issuance of a permit must:

(1) be headed "Application for Election to Disapprove a Weather Modification Permit"; and

(2) contain the following statement just ahead of the signatures of the applicants: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see disapproved the issuance of a permit for weather modification, including hail suppression."

(c) An application for a petition seeking an election to approve the issuance of a permit must:

(1) be headed "Application for Election to Approve a Weather Modification Permit"; and

(2) contain the following statement just ahead of the signatures of the applicants: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see approved the issuance of a permit for weather modification, including hail suppression."

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.156. ELECTION ON PETITION. (a) On the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election, the commissioners court of each county shall call and hold an election. Notice under Chapter 111, Local Government Code, of the commissioners court meeting to call and hold the election is not required. The date of the election shall be determined by the commissioners court in accordance with this subchapter, notwithstanding Sections 41.004 and 41.0041, Election Code.

(b) A petition under this subchapter must be filed with the clerk of each county within 30 days immediately following the date of the first publication of notice.

(c) An election under this subchapter must be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit.

(d) Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the executive director of the date of the election.

(e) Except as otherwise provided by this chapter, elections must be held in accordance with the Election Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.157. PETITION REQUIREMENTS. (a) The petition for an election under this subchapter must read substantially as follows:

"The following qualified voters of _____ County request the Commissioners Court of _____ County to call an election at which the qualified voters shall be asked to vote on the proposition of whether or not they approve of the issuance of a weather modification permit that includes authorization for hail suppression (description of area)."

(b) Each qualified voter signing the petition must give the

voter's full name and address and voter registration number.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.158. CERTIFICATION OF PETITION. (a) Within five days after the date of receiving a petition under this subchapter, the commissioners court shall have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. If only a part of a county is included in the target area or operational area, the county clerk shall also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area.

(b) On certification by the county clerk, the petition must be filed with the official records of the county and be made available for public inspection.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.159. DEPOSIT REQUIRED. (a) A person filing a petition with the county clerk shall deposit with the county clerk an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the county clerk until the result of the election to approve or disapprove the issuance of the permit is officially announced.

(b) If the result of the election favors the party petitioning for the election, the county clerk shall return the deposit to the person filing the petition or to the person's agent or attorney.

(c) If the result of the election does not favor the party petitioning for the election, the county clerk shall pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or to the person's agent or attorney.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1,

2003.

Sec. 301.160. FORM OF BALLOT. The ballots for an election under this subchapter must be printed to provide for voting for or against the proposition:

"The issuance of a permit providing for weather modification, including authorization for hail suppression and control in (description of area)."

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.161. ELECTION ORDER. (a) The order calling the election shall provide for:

(1) the time and place or places for holding the election;

(2) the form of the ballots; and

(3) the presiding judge for each voting place.

(b) The commissioners court shall publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.162. RESULTS OF ELECTION. (a) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the commissioners court not later than the fifth day after the date of the election.

(b) A copy of the results must be filed with the county clerk and is a public record.

(c) Not later than the fifth day after the results are filed, the commissioners court shall declare the results.

(d) The commissioners court of each county holding an election shall send certified copies of the results of the election to the executive director not later than 24 hours after the results are declared under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.163. ISSUANCE OR DENIAL OF PERMIT FOLLOWING ELECTION. (a) If a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit, a permit may not be issued.

(b) If a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, the Texas Department of Licensing and Regulation may issue the permit as provided in this subchapter, except that if a majority of the qualified voters voting in any of the following areas vote against issuance of the permit, that area is excluded from the coverage of the permit:

(1) an election precinct any part of which is located in the operational area; or

(2) an election precinct located wholly within the target area and contiguous with its outer boundary.

(c) If the Texas Department of Licensing and Regulation finds that a weather modification and control operation is still feasible, a permit may be issued covering areas in which no election is requested or areas in which the voters give their approval as provided by this subchapter.

(d) If a permit is denied under Subsection (a), an application for a permit covering all or part of the same target area or operational area that was denied may not be considered, and for a period of two years following the date of the election, a permit under that application may not be issued by the Texas Department of Licensing and Regulation and an election may not be held under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.164. PERMIT FOR HAIL SUPPRESSION PROHIBITED OUTSIDE TARGET AREA OR IN AREA EXCLUDED BY ELECTION. (a) A permit may not be issued that provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts

of counties located in any operational or target areas that were excluded from the coverage of the permit by an election under Section 301.163(a) or (b). Seeding may be done in those counties or parts of counties located in the operational or target area that were not excluded from the coverage of the permit by an election under Section 301.163(a) or (b), provided the seeding is reasonably calculated to take effect only within the target area.

(b) This section does not prohibit the observation of cloud and cloud formations.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.165. MONITOR OF PROGRAM. The Texas Department of Licensing and Regulation may monitor any program under conditions the Texas Department of Licensing and Regulation determines advisable.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.166. PETITION IN ADJACENT COUNTY. (a) On petition as provided in this subchapter, the commissioners court of any county outside but adjacent to a county included in the operational area of an existing or proposed permit shall call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county.

(b) If the county voters voting in the election disapprove the issuance of permits authorizing hail suppression, the Texas Department of Licensing and Regulation may not issue a permit covering the county until the proposition has been approved at a subsequent election.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.167. INCLUSION OF CERTAIN COUNTIES AND PARTS OF COUNTIES. (a) If any county or part of a county has disapproved the

issuance of a permit at a previous election held under this subchapter, that county or part of a county may not be included in any permit issued by the Texas Department of Licensing and Regulation until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved.

(b) The applicant for a permit that includes that county or part of a county has the burden of petitioning for an election and depositing costs in the manner provided by this subchapter for the original election to approve or disapprove a permit.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

SUBCHAPTER E. SANCTIONS

Sec. 301.201. PENALTIES. A person who violates this chapter is subject to Subchapters F and G, Chapter 51, Occupations Code, in the same manner as a person regulated by the Texas Department of Licensing and Regulation under other law is subject to those subchapters.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.202. ACT OF GOD. If a person can establish that an event that would otherwise be a violation of this chapter or a rule adopted or order or permit issued under this chapter was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of this chapter or a rule, order, or permit issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.203. DEFENSE EXCLUDED. Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the Texas Department of Licensing and Regulation does not relieve that person from liability for the violation of this chapter or a rule adopted or order or permit issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

SUBCHAPTER F. REVOCATION AND SUSPENSION OF PERMIT

Sec. 301.251. DEFINITION. In this subchapter, "permit holder" includes each member of a partnership or association that is a permit holder and, with respect to a corporation that is a permit holder, each officer and the owner or owners of a majority of the corporate stock, provided that the member or owner controls at least 20 percent of the permit holder.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.252. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. After notice and hearing, the Texas Department of Licensing and Regulation may revoke or suspend a permit issued under this chapter on any of the following grounds:

(1) violating any term or condition of the permit, and revocation or suspension is necessary to maintain the quality of water or the quality of air in the state, or to otherwise protect human health and the environment consistent with the objectives of the law within the jurisdiction of the Texas Department of Licensing and Regulation;

(2) having a record of environmental violations in the preceding five years at the permitted site;

(3) causing a discharge, release, or emission contravening a pollution control standard set by the Texas Department of Licensing and Regulation or contravening the intent of a law within the jurisdiction of the Texas Department of Licensing and Regulation;

(4) misrepresenting or failing to disclose fully all relevant facts in obtaining the permit or misrepresenting to the Texas Department of Licensing and Regulation any relevant fact at any time;

(5) being indebted to the state for fees, payment of penalties, or taxes imposed by the law within the department's jurisdiction;

(6) failing to ensure that the management of the permitted

facility conforms or will conform to the law within the jurisdiction of the Texas Department of Licensing and Regulation;

(7) abandoning the permit or operations under the permit;

(8) the finding by the Texas Department of Licensing and Regulation that a change in conditions requires elimination of the discharge authorized by the permit; or

(9) failing to continue to possess qualifications necessary for the issuance of the permit.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.253. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE. (a) This section applies to a license issued under this chapter or under a rule adopted under this chapter.

(b) After notice and hearing, the Texas Department of Licensing and Regulation may suspend or revoke a license, place on probation a person whose license has been suspended, reprimand a license holder, or refuse to renew or reissue a license on any of the following grounds:

(1) having a record of environmental violations in the preceding five years at a permit site;

(2) committing fraud or deceit in obtaining the license;

(3) demonstrating gross negligence, incompetency, or misconduct while acting as license holder;

(4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the Texas Department of Licensing and Regulation by the license holder;

(5) failing to keep and transmit records as required by a law within the jurisdiction of the Texas Department of Licensing and Regulation;

(6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a law within the jurisdiction of the Texas Department of Licensing and Regulation; or

(7) failing to continue to possess qualifications necessary for the issuance of the license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.254. PROCEDURES FOR NOTICE AND HEARINGS. The Texas Department of Licensing and Regulation by rule shall establish procedures for public notice and any public hearing under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.255. HEARINGS. A hearing under this subchapter shall be conducted in accordance with the hearing rules adopted by the Texas Department of Licensing and Regulation and the applicable provisions of Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.256. REVOCATION OR SUSPENSION BY CONSENT. If a permit holder or license holder requests or consents to the revocation or suspension of the permit or license, the executive director may revoke or suspend the permit or license without a hearing.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.257. OTHER RELIEF. A proceeding brought by the Texas Department of Licensing and Regulation under this subchapter does not affect the authority of the Texas Department of Licensing and Regulation to bring suit for injunctive relief or a penalty, or both, under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

SUBCHAPTER G. IMMUNITY; CERTAIN LEGAL RELATIONSHIPS

Sec. 301.301. IMMUNITY OF STATE. The state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons or groups.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 301.302. PRIVATE LEGAL RELATIONSHIPS. (a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity that makes the participants subject to liability without fault.

(b) The fact that a person holds a license or permit under this chapter or that the person has complied with this chapter or the rules issued under this chapter is not admissible as evidence in any legal proceeding brought against the person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

CHAPTER 302. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM

Sec. 302.001. FINDINGS. The legislature finds that weather modification and control activities may have a significant impact on Texas agriculture. The legislature further finds that the Texas Department of Licensing and Regulation is the proper state agency to administer grants to political subdivisions for weather modification and control activities.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.
Prior law (Sec. 20.001, Agriculture Code) amended by Acts 2003, 78th Leg., ch. 816, Sec. 22.001; Acts 2003, 78th Leg., ch. 1245, Sec. 1.

Sec. 302.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.
Prior law (Sec. 20.002, Agriculture Code) amended by Acts 2003, 78th Leg., ch. 816, Sec. 22.002; Acts 2003, 78th Leg., ch. 1245, Sec. 2.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 2.005, eff. September 1, 2011.

Sec. 302.003. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM. The department shall develop and administer a program awarding matching grants to political subdivisions of this state for weather modification and control.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 302.004. RULES. The commission may adopt rules necessary to administer this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.
Prior law (Sec. 20.004, Agriculture Code) amended by Acts 2003, 78th Leg., ch. 816, Sec. 22.003.

Sec. 302.005. CONTRACTS. The department may enter into contracts with public or private entities to assist the department in the administration or evaluation of the weather modification and control grant program or to conduct research relating to the effectiveness of weather modification and control activities.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.

Sec. 302.006. FUNDING. The department may accept appropriations and may solicit and accept gifts, grants, and other donations from any source to administer the weather modification and control grant program.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 2.001(a), eff. Sept. 1, 2003.