

- SUBJECT:** Expanding liability for the sale or use of an incorrect measuring device
- COMMITTEE:** Agriculture and Livestock — favorable, without amendment
- VOTE:** 6 ayes — T. King, C. Anderson, Cyrier, González, Simpson, Springer
1 nay — Rinaldi
- WITNESSES:** For — None
Against — Judith McGeary, Farm and Ranch Freedom Alliance
On — (*Registered, but did not testify:* Patrick Dudley and A.J. Wilson, Texas Department of Agriculture)
- BACKGROUND:** Agriculture Code, sec. 13.037(a) makes it a class C misdemeanor (maximum fine of \$500) for a person to knowingly use an incorrect weighing or measuring device in commerce. Sec. 13.120(b) makes it a class C misdemeanor for a person to knowingly sell an incorrect weighing or measuring device.

Sec. 13.007 allows the Texas Department of Agriculture to pursue civil penalties or an injunction against persons who either use or sell an incorrect weighing or measuring device.
- DIGEST:** HB 2704 would amend Agriculture Code, sec. 13.037(a) and sec. 13.120(b) to remove the word “knowingly” from the subsections that describe the offenses of using or selling an incorrect weighing or measuring device.

The bill would apply only to conduct that occurred on or after the bill’s effective date. For the purposes of enforcement, conduct would be considered to have occurred before the effective date of the bill if any element of the conduct occurred before that date.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

HB 2704 would make it easier for the Department of Agriculture to keep merchants from tampering with scales and meters by removing the word “knowingly” from the subsections creating an offense for the use of an incorrect weighing or measuring device. Scale tampering can have serious negative effects on conservation efforts and the commodities market. The knowing use of incorrect weighing and measuring devices can be difficult to detect and even harder to enforce. By lowering the culpable mental state required for an offense, the bill would provide an incentive for merchants to make sure their weighing and measuring devices were accurate. Legislation enacted in 2013 added the word “knowingly” to the applicable provisions in Agriculture Code, sec. 13.037 and sec. 13.120 and put an additional burden on the Department of Agriculture to enforce the law.

**OPPONENTS
SAY:**

HB 2704 could place a person acting in good faith and unaware that a weighing or measuring device might be malfunctioning at risk of criminal liability. The state should trust merchants to ensure that their weighing equipment is functioning properly. Creating more laws and more penalties that could threaten merchants with criminal liability would be contrary to the principles of limited government and personal responsibility.