

BILL ANALYSIS

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S.B. 1433
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Observers note that in a recent legislative session, Texas Department of Agriculture (TDA) regulatory programs were shifted to full cost recovery models and that TDA recently implemented a variety of changes to maintain services with minimal or no fee increases. S.B. 1433 seeks to make additional adjustments to maximize efficiencies, modernize statutes, improve customer protection, streamline processes, and save TDA resources.

As proposed, S.B. 1433 amends current law relating to certain regulatory programs administered by the Department of Agriculture, provides penalties, and imposes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Agriculture (TDA) in SECTION 3.01 (Section 12.023, Agriculture Code), SECTION 3.04 (Section 71.043, Agriculture Code), SECTION 3.05 (Section 76.043, Agriculture Code), SECTION 3.06 (Section 76.072, Agriculture Code), SECTION 3.10 (Section 101.008, Agriculture Code), SECTION 3.11 (Section 132.024, Agriculture Code), SECTION 3.12 (Section 134.015, Agriculture Code), SECTION 4.16 (Section 13.101, Agriculture Code), SECTION 4.17 (Section 13.1011, Agriculture Code), SECTION 4.18 (Section 13.111, Agriculture Code), SECTION 4.19 (Section 13.113, Agriculture Code), SECTION 4.26 (Sections 13.453, 13.458, 13.461, and 13.463, Agriculture Code), and SECTION 4.30 of this bill.

Rulemaking authority previously granted to TDA is modified in SECTION 3.03 (Section 14.023, Agriculture Code), SECTION 3.05 (Section 76.043, Agriculture Code), SECTION 3.06 (Section 76.072, Agriculture Code), SECTION 3.07 (Section 76.108, Agriculture Code), SECTION 3.09 (Section 76.113, Agriculture Code), and SECTION 4.02 (Section 13.007, Agriculture Code) of this bill.

Rulemaking authority previously granted to TDA is rescinded in SECTION 4.17 (Section 13.1011, Agriculture Code), SECTION 4.27 (Section 13.1012, Agriculture Code), SECTION 4.28 (Sections 13.305, 13.355, and 13.404, Agriculture Code), and SECTION 6.01 (Section 71.006, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of agriculture in SECTION 5.01 (Section 41.023, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. ADMINISTRATIVE PENALTIES

SECTION 1.01. Amends Section 12.020, Agriculture Code, by amending Subsections (g), (h), (i), (j), (k), and (o) and adding Subsection (j-1), as follows:

(g) Requires the person charged, rather than authorizes the person charged, not later than the 20th day after the date on which notice is received, to accept the determination of the Texas Department of Agriculture (TDA) made under Subsection (e), including the recommended penalty, or make a written request for a hearing on the determination. Makes nonsubstantive changes.

(h) Requires the commissioner of agriculture (commissioner), if the person charged with the violation accepts the determination of TDA or fails to timely respond to the notice, to issue an order approving the determination and ordering the payment of the recommended penalty.

(i) Requires TDA, if the person charged requests a hearing, to set a hearing and give notice of the hearing. Deletes existing text requiring TDA, if the person charged fails to timely respond to the notice, to set a hearing and give notice of the hearing.

(j) Requires TDA to give notice of the commissioner's order under Subsection (h) or (i) to the person charged.

(j-1) Requires a person ordered to pay a penalty under Subsection (h), not later than the 30th day after the date notice is provided under Subsection (j), to pay the penalty.

(k) Requires the person charged with the penalty, within the 30-day period immediately following the day on which the order under Subsection (i) becomes final under Section 2001.144 (Decisions; When Final), Government Code, to pay the penalty in full; 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 without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(o) Provides that judicial review of the order of the commissioner under Subsection (i) is instituted by filing a petition as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001 (Administrative Procedure), Government Code, and is under the substantial evidence rule.

SECTION 1.02. Provides that the changes in law made by this article to Section 12.020 (Administrative Penalties), Agriculture Code, apply only to a violation committed on or after the effective date of this Act. Provides that a violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

ARTICLE 2. CEASE AND DESIST ORDERS

SECTION 2.01. Amends Section 12A.002, Agriculture Code, as follows:

Sec. 12A.002. CEASE AND DESIST ORDER. (a) Authorizes TDA, if it appears to TDA that a person who is not licensed by TDA is violating a statute or rule that requires the person to hold a license issued by TDA or a statute or rule relating to an activity regulated by TDA, to issue a cease and desist order prohibiting the person from engaging in the activity. Deletes existing text authorizing the commissioner, if it appears to the commissioner that a person who is not licensed by TDA is violating a statute or rule that requires the person to hold a license issued by TDA or a statute or rule relating to an activity regulated by TDA, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity.

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

order, that the action taken or order issued by TDA was not authorized, or, if the order was authorized, that the order was an abuse of TDA's discretion.

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

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

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

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

(3) both injunctive relief and a civil penalty.

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

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

SECTION 2.02. Amends Subchapter A, Chapter 12A, Agriculture Code, by adding Section 12A.004, as follows:

Sec. 12A.004. PENALTY FOR VIOLATING CEASE AND DESIST ORDER. (a) Provides that a person commits an offense if the person violates a cease and desist order issued under Section 12A.002.

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

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

SECTION 2.03. Provides that the changes in law made by this article to Section 12A.002, Agriculture Code, apply only to a violation committed on or after the effective date of this Act. Provides that a violation committed before the effective date of this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

ARTICLE 3. TERM AND RENEWAL OF LICENSES

SECTION 3.01. Amends Section 12.023, Agriculture Code, as follows:

Sec. 12.023. New heading: TERM AND EXPIRATION OF REGISTRATION OR LICENSES. (a) Authorizes TDA by rule, notwithstanding any other provision of this code or Chapter 1951 (Structural Pest Control), Occupations Code, that establishes the term of a license or registration issued by TDA, to prescribe the term of the license or registration.

(b) Creates this subsection from existing text. Makes no further change to this subsection.

SECTION 3.02. Amends Section 12.024(f), Agriculture Code, to require TDA, at least 30 days before the expiration of a person's license or registration, to 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 TDA, rather than to send written notice of the impending license or registration expiration to the person at the license holder's or registrant's last known address according to the records of TDA.

SECTION 3.03. Amends Section 14.023(b), Agriculture Code, to require an applicant to file a separate application for each license, renewal, or amendment, and requires an applicant to accompany each application for a license or renewal with a license fee, rather than an annual license fee, as provided by TDA rule.

SECTION 3.04. Amends Sections 71.043(b), (c), and (d), Agriculture Code, as follows:

(b) Authorizes a florist or nursery owner to apply for registration or renewal of registration by submitting an application prescribed by TDA and a fee, rather than an annual fee.

(c) Provides that registrations under this section (Annual Registration) expire at the end of the registration period established by TDA rule, rather than expire one year after issuance.

(d) Requires TDA, upon receipt of the correct registration fee, rather than upon receipt of the correct annual registration fee, to issue a registration certificate for each location a florist or nursery owner has registered.

SECTION 3.05. Amends Section 76.043(a), Agriculture Code, as follows:

(a) Provides that registration of a pesticide expires at the end of the registration period established by TDA rule. Requires TDA by rule to adopt a system under which registrations expire on various dates during the year. Deletes existing text providing that registration of a pesticide expires on the second anniversary of the date of its approval or renewal except that TDA is required by rule to adopt a system under which registrations expire on various dates during the year.

SECTION 3.06. Amends Section 76.072, Agriculture Code, as follows:

Sec. 76.072. EXPIRATION. Provides that a pesticide dealer license expires at the end of the license period established by TDA rule. Authorizes TDA by rule to adopt a system under which licenses expire on specified dates during a year. Deletes existing text providing that a pesticide dealer license expires on the second anniversary of the date of its granting or renewal unless TDA by rule adopts a system under which licenses expire on specified dates during a year.

SECTION 3.07. Amends Section 76.108(b), Agriculture Code, to require that an application for an original or renewal commercial applicator license include information as required by rule of the head of the agency and be accompanied by a license fee, rather than accompanied by an annual license fee, as fixed by the head of the agency.

SECTION 3.08. Amends Section 76.109(b), Agriculture Code, to require an applicant for an original or renewal noncommercial applicator license to include with the application a license fee, rather than an annual license fee, as fixed by the governing body of or the head of the regulatory agency.

SECTION 3.09. Amends Sections 76.113(a) and (c), Agriculture Code, as follows:

(a) Provides that each pesticide applicator license issued under this chapter (Pesticide and Herbicide Regulation) expires at the end of the license period established by TDA rule. Deletes existing text providing that each pesticide applicator license issued under this chapter, other than a private applicator license, expires at the end of the license period established by TDA rule.

(c) Authorizes a person having a valid license issued under this subchapter (Use and Application), except as provided by Subsection (d), to renew the license for another term without retesting by paying to the regulatory agency the license fee required by this subchapter. Requires a person who fails to apply for renewal of a license on or before the expiration date to pay, in addition to the license fee, rather than in addition to the annual license fee, the late fee provided by Section 12.024 (Late Renewal of License or Registration) of this code. Makes nonsubstantive changes.

SECTION 3.10. Amends Section 101.008(a), Agriculture Code, to provide that a license expires at the end of the license period established by TDA rule, rather than expires one year from the date of issuance.

SECTION 3.11. Amends Section 132.024, Agriculture Code, to provide that a license issued or renewed under this chapter (Eggs) expires at the end of the license period established by TDA rule, rather than a license issued or renewed under this chapter is valid for one year.

SECTION 3.12. Amends Section 134.015(b), Agriculture Code, to provide that a license is valid for the period established by TDA rule, rather than for two years after the date of issuance.

SECTION 3.13. Repealer: Section 76.113(b) (relating to providing that each private applicator license is valid for five years), Agriculture Code.

ARTICLE 4. REGULATION OF WEIGHTS AND MEASURES

SECTION 4.01. Amends Section 13.001(a), Agriculture Code, to define "commercial weighing or measuring device" and "operator" or "user," to redefine "weighing or measuring device" in this chapter (Weights and Measures), and to make conforming and nonsubstantive changes.

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

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

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

SECTION 4.03. Amends Section 13.021(b), Agriculture Code, to delete existing text providing that a person who violates a rule adopted under this subsection by TDA for the purpose of administering this subchapter (Standard Weights and Measures) and bringing about uniformity between the standards established under this subchapter and the standards established by federal law commits an offense.

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

(b) Provides that, except as provided by Subsections (c) (relating to requiring a mechanism or machine that is adapted to measure and deliver liquid by volume and that indicates fractional parts of a gallon indicate the fractional parts either in terms of binary submultiple subdivisions or in terms of tenths of a gallon) and (d), rather than except as provided by Subsection (c) of this section (Standard for Liquid Capacity), 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. Deletes existing text providing that the barrel consists of 31-1/2 gallons, and a hogshead consists of two barrels. Makes nonsubstantive changes.

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

SECTION 4.05. Amends Section 13.027(b), Agriculture Code, to provide that a person violates this chapter, rather than a person commits an offense, if the person fails or refuses to comply with the rules adopted under this section (Standard Net Weight or Count Set by Rule).

SECTION 4.06. Amends Section 13.031(f), Agriculture Code, to provide that a person violates this chapter, rather than a person commits an offense if, in violation of this section (Sale of Commodities by Proper Measure), 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, and to make nonsubstantive changes.

SECTION 4.07. Amends Section 13.033, Agriculture Code, to provide that a person violates this chapter, rather than a person commits an offense, if the person sells or keeps, offers, or exposes for sale milk or cream in bottles or other containers of a capacity other than one of the standard liquid measures provided for by Section 13.024 (Standard for Liquid Capacity), and to make nonsubstantive changes.

SECTION 4.08. Amends Section 13.034(d), Agriculture Code, to provide that a person violates this chapter, rather than a person commits an offense if, in violation of this section (Sale of Cheese, Meat, or Meat Food Product by Nonstandard Weight), the person sells or keeps, offers, or exposes for sale cheese, meat, or a meat food product by a measure other than standard net weight.

SECTION 4.09. Amends Section 13.035(b), Agriculture Code, to provide that a person violates this chapter, rather than a person commits an offense, if the person misrepresents the price of a commodity, item, or service sold or offered or exposed for sale; or represents the price or the quantity of a commodity, item, or service sold or offered or exposed for sale in a manner intended or tending to mislead or deceive an actual or prospective customer.

SECTION 4.10. Amends Section 13.036, Agriculture Code, to provide that a person violates this chapter, rather than commits an offense, if the person or the person's servant or agent sells or offers or exposes for sale a quantity of a commodity or service that is less than the quantity the person represents; or as a buyer furnishing the weight or measure of a commodity or service by which the amount of the commodity or service is determined, takes or attempts to take more than the quantity the person represents.

SECTION 4.11. Amends Section 13.037(a), Agriculture Code, to provide that a person commits an offense if the person or the person's servant or agent knowingly uses an incorrect weighing or measuring device in buying or selling a commodity; computing a charge for services rendered on the basis of weight or measure; or determining the weight or measure of a commodity, if a charge is made for the determination.

SECTION 4.12. Amends Section 13.038, Agriculture Code, to provide that a person violates this chapter, rather than a person commits an offense, if the person or the person's servant or agent sells or keeps, offers, or exposes for sale a commodity in violation of this subchapter.

SECTION 4.13. Amends Section 13.040, Agriculture Code, as follows:

Sec. 13.040. STOP-SALE ORDER. (a) Authorizes TDA, if TDA has reason to believe that a commodity is being sold or kept, offered, or exposed for sale in violation of 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, rather than in violation of Section 13.030 (Sale of Commodities by Net Weight), 13.031, 13.032 (Standard Fill and Quantity Labeling for Commodities in Package Form), 13.033 (Sale of Milk or Cream in Nonstandard Container), 13.034 (Sale of Cheese, Meat, or Meat Food Product by Nonstandard Weight), 13.035 (Price Advertisement; Misrepresentation of Price or Quantity), 13.036 (False Representation of Commodity Quantity), or 13.037 (Use of Incorrect Weighing or Measuring Device) of this code, to issue and enforce a written or printed order to stop the sale of the commodity or service. Requires TDA to present the order to the owner or custodian of the commodity or seller of the service. Prohibits the person receiving the order from selling the commodity or providing 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, rather than prohibiting the person receiving the order from selling the commodity until discharged by a court under Subsection (b) of this section or until the commissioner finds that the commodity is in compliance with the applicable section.

(b) Entitles the owner or custodian of a commodity or a person selling or offering for sale a service prohibited from sale by an order of TDA 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) Provides that this section does not limit the right of TDA to proceed as authorized by other sections of this code, rather than other sections of this subchapter.

SECTION 4.14. Amends Section 13.041, Agriculture Code, as follows:

Sec. 13.041. PENALTIES; DEFENSE. (a) Provides that an offense under Section 13.030, 13.032, 13.037, or 13.039 (Testing of Package by Department) is a Class B misdemeanor, unless the person has been previously convicted of an offense under any of those sections, in which case the offense is a Class A misdemeanor. Deletes existing text providing that an offense under Section 13.021 (Legal Standards), 13.027, 13.029 (Exemption of Weighing or Measuring Devices), or each of Sections 13.030, 13.031, 13.032, 13.033, 13.034, 13.035, 13.036, 13.037, 13.038 (Sale of Commodity in Violation of Subchapter) and 13.039 of this code is a Class C misdemeanor.

(b) Provides that 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, rather than it is a defense to prosecution under Section 13.030-13.038 of this code, that a discrepancy between the actual weight or volume at the time of sale to a consumer and the weight marked on the container or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

SECTION 4.15. Amends Subchapter C, Chapter 13, Agriculture Code, by adding Section 13.1001, as follows:

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

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

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

SECTION 4.16. Amends Section 13.101, Agriculture Code, as follows:

Sec. 13.101. New heading: INSPECTION OF DEVICES. (a) Requires that a commercial weighing or measuring device, unless a commercial weighing or measuring device is exempt from the application of this section by TDA rule, be inspected and tested for correctness by TDA, rather than requires that a weighing or measuring device shall be inspected and tested for correctness by TDA, at least once every four years, or more often as required by TDA, if it 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 is purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(b) Authorizes TDA, to the extent necessary to ensure compliance with the official standards, to 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, rather than requires TDA, to the extent necessary to ensure compliance with the official standards, to require additional inspection and testing of weighing or measuring devices.

(c) Provides that 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, TDA rule, or TDA order imposing a term of probation. Makes conforming change.

(d) Redesignates existing Subsection (e) as Subsection (d) and makes a conforming change.

Deletes existing Subsection (d) authorizing a weighing or measuring device that is inspected and found correct by TDA, unless TDA requires an additional inspection, to be kept for use, used, kept or offered for sale, or sold without further testing.

SECTION 4.17. Amends Section 13.1011, Agriculture Code, as follows:

Sec. 13.1011. REQUIRED REGISTRATION. (a) Requires a person who owns or operates a commercial weighing or measuring device, unless a commercial weighing or measuring device is exempt from the application of this section by TDA rule, to register the device with TDA before using the device for a commercial transaction. Deletes existing text requiring a person who operates a weighing or measuring device for a commercial transaction to register annually with TDA.

(b) Requires that an application for a device registration:

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

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

(3) include the registration fee required under Section 13.1151 (Fees for Registration and Inspection).

Deletes existing Subsection (b) requiring TDA to establish a system of annual registration and may provide for staggered year-round registration.

(c) Provides that a registration under this section is valid for one year unless a different period is established by TDA rule. Requires that the registration be renewed at or before the end of each registration period, and requires that the application for renewal include the renewal fee required by TDA rule.

(d) Creates this subsection from existing text. Authorizes TDA, if a person fails to register or renew a registration as required by this section and pay the fee required under Section 13.1151, to 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.

Deletes existing Subsection (d) requiring TDA to adopt rules for the administration of this section and Section 13.1151 of this code.

SECTION 4.18. Amends Section 13.111, Agriculture Code, as follows:

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

(b) Requires TDA, if, in the judgment of TDA, an incorrect commercial weighing or measuring device is capable of being repaired, to place on the device a tag or other mark with the words "Out of Order." Authorizes the owner or user of the commercial weighing or measuring device to not use it, rather than to have it repaired within 30 days but to be prohibited from using or disposing of it, until it is reinspected and released for use by TDA or inspected and released for use in any other manner authorized by TDA rule.

(c) Prohibits the owner, operator, or user of a commercial weighing or measuring device from destroying, replacing, or otherwise disposing of a device declared to be incorrect or condemned under this section except as provided by TDA rule.

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

(a) Provides that the standards of weights and measures maintained by TDA 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, rather than providing that the standards of weights and measures received from the United States and certified by the National Institute of Standards and Technology are the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and certified.

(d) Requires that all standards furnished to or tested for a city be true and correct and certified by TDA, rather than be true and correct, certified by TDA, and stamped with the letter "C."

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

or individual or business licensed by TDA to perform private maintenance, repairs, or calibration of weighing or measuring devices at least once every year.

(f) Authorizes TDA to adopt rules to regulate the frequency and place of inspection and correction of the standards used by an individual or business licensed by TDA to perform device maintenance activities under Subchapter I.

(g) Authorizes TDA to inspect any standard used by an individual or business licensed by TDA to perform device maintenance activities described by Subchapter I if TDA has reason to believe a standard is no longer in compliance with this chapter.

(h) Creates this subsection from existing text. Requires TDA to keep a record of the inspection and character of standards inspected under this section (Standards Used in Inspection), rather than a record of the inspection and character of weights and measures inspected under this subsection.

SECTION 4.20. Amends Section 13.114, Agriculture Code, as follows:

Sec. 13.114. TOLERANCES. Deletes existing Subsection (a) designation. Requires TDA to establish specifications and tolerances for commercial weighing or measuring devices used in this state. Requires that the specifications and tolerances be similar to those recommended by the National Institute of Standards and Technology. Makes nonsubstantive changes. Deletes existing Subsection (b) providing that a person commits an offense if the person fails or refuses to comply with the tolerances and specifications established under this section.

SECTION 4.21. Amends Section 13.115(a), Agriculture Code, to authorize TDA to collect a fee, rather than require TDA to collect a fee in accordance with this section, for each test of a weighing or measuring device required by this subchapter (Inspection and Registration of Weighing or Measuring Devices) or performed on request of the owner.

SECTION 4.22. Amends Section 13.117, Agriculture Code, to provide that 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 TDA, and the inspection, test, or examination is required or authorized by this chapter, rather than a providing that a person commits an offense if the person neglects or refuses to allow a weighing or measuring device under the person's control or in the person's possession to be inspected, tested, or examined by TDA, and the inspection, test, or examination is required by this chapter.

SECTION 4.23. Amends Section 13.119, Agriculture Code, to provide that a person commits an offense if the person removes or obliterates a tag or device placed or required by TDA to be placed on a weighing or measuring device under this chapter.

SECTION 4.24. Amends Section 13.120(b), Agriculture Code, to provide that a person commits an offense if the person or the person's servant or agent knowingly offers or exposes for sale, hire, or award or sells an incorrect weighing or measuring device; possesses an incorrect weighing or measuring device; or sells, offers for sale, uses, or possesses for the purpose of sale or use a device or instrument to be used to falsify or intended to falsify a weight or measure.

SECTION 4.25. Amends Section 13.122, Agriculture Code, as follows:

Sec. 13.122. PENALTIES. (a) Creates this subsection from existing text. Provides that an offense under Section 13.119 (Removal of Registration Tag), 13.120 (Sale or Use of Incorrect Weighing or Measuring Device), or 13.121 (Disposing of Condemned Weighing or Measuring Device) is a Class C misdemeanor, unless the person has been previously convicted of an offense under any of those sections, in which case the offense is a Class B misdemeanor, rather than an offense under Section 13.114 (Tolerances) or each of Sections 13.116 (Use or Sale of Unsealed Weight or Measure [repealed]), 13.117 (Refusing to Allow Test of Weighing or Measuring Device), 13.118 (Hindering Department Personnel), and 13.119 through 13.121 is a Class C misdemeanor.

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

SECTION 4.26. Amends Chapter 13, Agriculture Code, by adding Subchapter I, as follows:

SUBCHAPTER I. LICENSING OF SERVICE TECHNICIANS AND SERVICE COMPANIES

Sec. 13.451. **DEFINITIONS.** Defines "license holder," "service company," and "service technician" in this subchapter.

Sec. 13.452. **DEVICE MAINTENANCE ACTIVITIES.** Provides that 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 TDA.

Sec. 13.453. **POWERS AND DUTIES OF DEPARTMENT.** (a) Authorizes TDA, to verify compliance with licensing requirements, trade practices, TDA rules, and this chapter, to 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) Authorizes TDA to 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) Authorizes TDA by rule to adopt additional requirements for the issuance of a license and for the denial of an application for a license or renewal of a license. Requires that rules adopted by TDA under this subsection be designed to protect the public health, safety, and welfare and the proper inspection, testing, and operation of commercial weighing and measuring devices.

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

(e) Authorizes TDA to specify the date, time, and place for any inspection authorized by this section.

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

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

(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 TDA to prohibit use of the device; and

(B) notifies TDA of the device's removal not later than the 10th day after the date the device was removed in the manner provided by TDA rule; or

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

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

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

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

(b) Provides that TDA is not required to hold a license issued under this subchapter.

Sec. 13.455. SERVICE TECHNICIAN LICENSE REQUIRED. Prohibits an individual, unless the individual is exempt from the licensing requirement, from performing or offering to perform device maintenance activities unless the individual holds a service technician license issued by TDA under this subchapter.

Sec. 13.456. SERVICE COMPANY LICENSE REQUIRED. (a) Prohibits a person, unless the person is exempt from the license requirement, from employing an individual who performs or offers to perform device maintenance activities unless the person holds a service company license issued by TDA under this subchapter.

(b) Prohibits an individual, unless the individual is exempt from the licensing requirement, from performing or offering to perform device maintenance activities as a sole proprietor unless the individual holds a service technician license and a service company license issued by TDA under this subchapter.

Sec. 13.457. APPLICATION FOR LICENSE. Requires an applicant for a license under this subchapter to submit to TDA:

(1) an application form prescribed by TDA;

(2) any other documents required by TDA; and

(3) a fee in an amount set by TDA.

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

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

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

(b) Requires an applicant for the issuance or renewal of a license under this section to:

- (1) submit to TDA 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 TDA rule.

Sec. 13.460. INSURANCE POLICY REQUIRED FOR SERVICE COMPANY. Requires a service company to 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 (Surplus Lines Insurance), Insurance Code, and rules adopted by the commissioner of insurance in an amount set by TDA and based on the type of licensed activities to be performed.

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

Sec. 13.462. LICENSE RENEWAL. Requires that a person licensed under this subchapter periodically renew the person's license. Provides that the license expires unless the license holder submits an application for renewal accompanied by the renewal fee set by TDA or by the late fee set by TDA and meets the requirements for renewal.

Sec. 13.463. PRACTICE BY LICENSE HOLDER. (a) Requires a license holder to perform device maintenance activities in compliance with TDA rules.

(b) Authorizes a license holder to use only equipment approved by TDA, as provided by TDA rules, when performing device maintenance activities.

Sec. 13.464. CRIMINAL PENALTY. (a) Provides that 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) Provides that an offense under Subsection (a) is a Class B misdemeanor, unless the person has been previously convicted of an offense under this section, in which case the offense is a Class A misdemeanor.

SECTION 4.27. Repealers: Sections 13.1012 (Service Person Registration Requirement) and 13.115(g) (relating to authorizing TDA to collect the fees prescribed by this section (Fees for Department Inspection) only once annually unless requested to perform additional tests by the owner of the weight or measure), Agriculture Code.

SECTION 4.28. (a) Repealers: Subchapters F (Inspection and Testing of Liquefied Petroleum Gas Meters), G (Inspecting and Testing of Ranch Scales), and H (Licensed Inspectors of Weighing and Measuring Devices), Chapter 13, Agriculture Code.

(b) Effective date, this section: March 1, 2014.

SECTION 4.29. Provides that the changes in law made by this article to Sections 13.007, 13.021, 13.027, 13.031, 13.033, 13.034, 13.035, 13.036, 13.037, 13.038, 13.041, 13.114, 13.117, 13.119, 13.120, 13.122, 13.308, 13.358, and 13.407, Agriculture Code, apply only to an offense or violation committed on or after the effective date of the relevant change in law. Provides that an offense or violation committed before the effective date of the change in law is governed by the law in effect on the date the offense or violation was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense or violation was committed before the effective date of the change in law if any element of the offense or violation occurred before that date.

SECTION 4.30. Requires TDA, not later than December 1, 2013, to adopt rules necessary to implement Subchapter I, Chapter 13, Agriculture Code, as added by this article.

SECTION 4.31. Requires TDA, not later than January 1, 2014, to begin accepting applications for and issuing service technician licenses and service company licenses under Sections 13.458 and 13.459, Agriculture Code, as added by this article.

SECTION 4.32. Effective date, Sections 13.455, 13.456, and 13.464, Agriculture Code, as added by this article: March 1, 2014.

ARTICLE 5. NOTICE OF COMMODITY PRODUCERS BOARD ELECTIONS

SECTION 5.01. Amends Section 41.023(b), Agriculture Code, as follows:

(b) Requires the commissioner by rule to prescribe the manner for providing public notice under Subsection (a) (relating to requiring the certified organization to give public notice of certain information). Deletes existing text requiring that the notice under Subsection (a) of this section (Notice of Referendum and Election) be published in one or more newspapers published and distributed within the boundaries described in the petition. Deletes existing text requiring that the notice be published for not less than once a week for three consecutive weeks, beginning at least 60 days before the date of the election. Deletes existing text requiring the certified organization, in addition, at least 60 days before the date of the election, to give direct written notice to each county agent in any county within the boundaries described in the petition.

SECTION 5.02. Provides that the change in law made by this article to Section 41.023(b), Agriculture Code, applies only to an election ordered on or after the effective date of this Act. Provides that an election ordered before the effective date of this Act is governed by the law in effect when the election was ordered, and the former law is continued in effect for that purpose.

ARTICLE 6. PLANT PEST QUARANTINES

SECTION 6.01. Repealer: Section 71.006 (Hearing), Agriculture Code.

ARTICLE 7. DISPOSITION OF LIVESTOCK EXPORT FACILITIES

SECTION 7.01. Amends Section 2166.003, Government Code, by adding Subsection (c), to provide that this chapter (Building Construction and Acquisition) and Chapter 2175 (Surplus and Salvage Property) do not apply to the disposition, sale, or transfer of a pen, shed, or ancillary building constructed by and for TDA for the processing of livestock before export.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Effective date, except as otherwise provided by this Act: September 1, 2013.